

December 10, 2021

Tristan Brown, Acting Administrator  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590  
[tristan.brown@dot.gov](mailto:tristan.brown@dot.gov)

**Re: PHMSA Special Permit DOT-SP 20534 for LNG Transport by Rail Car**

Dear Mr. Brown,

The undersigned organizations write to urge the Pipeline and Hazardous Materials Safety Administration (PHMSA) to deny the application filed by Energy Transport Solutions (ETS) to renew Special Permit DOT-SP 20534 (the “Special Permit”), which expired on November 30, 2021. Because new information has come to light regarding the potential impact of the proposed activity on safety and GHG emissions, and because ETS can provide no justification for why the Special Permit should be renewed, we believe the renewal application should be denied.

**I. Background**

On December 5, 2019, PHMSA issued DOT Special Permit (SP) 20534<sup>1</sup> to Energy Transport Solutions authorizing the transportation of liquefied natural gas (LNG) in DOT-113C120W tank cars from a planned LNG liquefaction plant in Wyalusing Township, Pennsylvania to the Gibbstown Logistics Center (GLC) in Gibbstown, New Jersey.<sup>2</sup> This permit authorizes the first and only use of DOT-113C120W tank cars to transport liquefied natural gas in the United States.

The Special Permit allows LNG to be transported by rail through one of the most densely populated areas of the nation. LNG is highly explosive, and transporting LNG by rail through these communities leaves residents vulnerable to uncontrollable fires and deadly explosions. The rail route directly exposes hundreds of communities in Pennsylvania and New Jersey—approximately two million people, including many

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<sup>1</sup> U.S. Dep’t of Transp., Pipeline & Haz. Mat. Safety Admin., Special Permit DOT-SP 20534 (issued December 5, 2019), <https://www.phmsa.dot.gov/safe-transportation-energy-products/dot-20534-pdf>.

<sup>2</sup> For more information on proposed transportation routes, see *LNG Gibbstown Interactive Map*, Delaware Riverkeeper Network (last visited Dec. 10, 2021), <https://www.delawareriverkeeper.org/taxonomy/term/1174>.

communities of color and low-income populations already overly burdened with environmental injustices—to the dangers posed by the up to 100-car unit LNG trains that would travel as often as twice per day through their neighborhoods.

Our organizations have previously objected to the proposed issuance of this permit based on public safety concerns and environmental grounds. In July 2021 and then again in August 2021, [our coalition submitted a letter](#) to PHMSA requesting that PHMSA either revoke DOT-SP 20534 or deny any application for renewal.

Subsequent to the issuance of the Special Permit, PHMSA issued a rule authorizing the bulk transportation of LNG by rail tank car for carriers nationwide requiring safety measures beyond those included in the Special Permit (the “LNG by rail rule”).<sup>3</sup> And in November of this year, PHMSA proposed suspending the LNG by rail rule to protect the public, property, and the environment from unreasonable risks from transportation of LNG in rail tank cars.

Energy Transport Solutions’ Special Permit expired on November 30, 2021, and because we believe ETS’ application for renewal was submitted within 60 days of the permit’s expiration, no action may be taken pursuant to the permit unless PHMSA approves an application for either renewal of the permit or a new permit.<sup>4</sup>

According to PHMSA regulations, if ETS had applied for renewal at least 60 days before expiration of the special permit, it *would not* have expired until PHMSA took action on the application for renewal.<sup>5</sup> Because Energy Transport Solutions, LLC, the holder of the Special Permit, did not apply for renewal at least 60 days before the Special Permit’s expiration date, it expired by its terms.<sup>6</sup>

## **II. PHMSA Should Deny Energy Transport Solutions’ Application to Renew the Special Permit**

Since PHMSA’s issuance of the Special Permit in 2019, new information has emerged regarding the effect of the transportation of LNG by rail on safety and greenhouse gas emissions. Because the activity covered in the Special Permit has been found to be even more dangerous than previously believed, PHMSA should deny ETS’ application to renew the permit, or at the very least, provide a new opportunity for public notice and comment.

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<sup>3</sup> “Hazardous Materials: Liquefied Natural Gas by Rail,” Final Rule, 85 Fed. Reg. 44,994 (July 24, 2020).

<sup>4</sup> 49 C.F.R. § 107.109(b).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

## **A. PHMSA Must Deny Energy Transfer Solutions' Application to Renew the Special Permit In Light of New Information About the Dangers of This Activity**

Since the issuance of the Special Permit, more information has become known regarding the dangers posed to communities by the transportation of LNG by rail. In particular, the Special Permit allows for the use of DOT-113C120W tank cars that have not been proven safe for the transport of LNG, a hazardous, flammable, and potentially explosive cargo. The tank cars approved for use under the Special Permit were designed 50 years ago and were not intended for the transportation of LNG, but for other cryogenic materials. They are being inappropriately repurposed to transport LNG in this Special Permit.

PHMSA has acknowledged as much. As explained above, after PHMSA issued the Special Permit, the agency passed a rule allowing for the transportation of LNG by rail without a special permit. The proposed rule acknowledged the dangers of this type of activity, explaining that the risks of transporting LNG by rail include fireballs, flash fire, and explosions from ground-level vapor clouds that reach nearly 2,500°F.<sup>7</sup> In an attempt to mitigate these risks, the regulation contains safety requirements beyond those included in the Special Permit. In particular, the new regulations require the use of the DOT-113C120W9 tank car, which includes, among other things, a thicker outer tank than the DOT-113C120W-specification tank cars.<sup>8</sup> Special Permit DOT-SP 20534 does not include this safety enhancement.

That is not all—as mentioned above, PHMSA is now proposing to suspend the LNG by rail rule, recognizing the significant uncertainties the activity poses to safety and the environmental risks of transporting LNG by rail.<sup>9</sup> The same reasoning that has led to the proposed suspension of the LNG by rail rule should apply to Special Permit DOT-SP 20534. The communities in Wyalusing, Gibbstown, and all those in between should not be forced to bear the risks DOT seeks to eliminate in its suspension of the LNG by rail rule.

## **B. PHMSA Must Deny Energy Transfer Solutions' Application to Renew the Special Permit In Light of New Information About the Greenhouse Gas Emissions Associated With This Activity**

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<sup>7</sup> “Hazardous Materials: Liquefied Natural Gas by Rail,” Proposed Rule, 84 Fed. Reg. 56,964 (Oct. 24, 2019).

<sup>8</sup> “Hazardous Materials: Liquefied Natural Gas by Rail,” Final Rule, 85 Fed. Reg. 44,994 (July 24, 2020).

<sup>9</sup> “Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail,” Notice of Proposed Rulemaking, 86 Fed. Reg. 61,731 (Nov. 8, 2021).

The activity subject to permit renewal will also accelerate climate change. LNG is primarily composed of methane, which is the second most prevalent greenhouse gas after carbon dioxide and responsible for about half of the 1.1-degree temperature rise since the 1850s.<sup>10</sup> In light of the high global warming potential of methane, the Biden administration has pledged to slash methane emissions.<sup>11</sup>

In its LNG by rail rule, PHMSA specifically identified “potential direct and indirect GHG emissions associated with authorizing LNG by rail tank car and the adequacy of emergency planning and response resources” as areas in need of further study.<sup>12</sup> PHMSA reiterated this concern in its recent proposal to suspend the LNG by rail rule.

Indeed, new reports detailing the emissions resulting from LNG have been released since the Special Permit was issued, finding that LNG emits even more greenhouse gases than originally estimated. For example, greenhouse gas emissions from the extraction, transport, liquefaction, and re-gasification of LNG can be almost equal to the emissions produced from the actual burning of the gas, effectively doubling the climate impact of each unit of energy created from gas transported overseas.<sup>13</sup> Leaks and intentional releases of methane, a potent GHG, during the extraction and transport of the LNG can constitute up to 14 percent of LNG’s life-cycle emissions.<sup>14</sup>

### **C. PHMSA Must Deny Energy Transport Solutions’ Application to Renew the Special Permit Because There is no Justification for why the Special Permit Should be Renewed**

It is our understanding that an application to renew the permit was filed on November 30, 2021—the expiration date of the Special Permit. PHMSA regulations require that if no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.<sup>15</sup> ETS has not transported LNG under this Special Permit, and there is no reason for why the Special Permit should be renewed.

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<sup>10</sup> *More Countries Join Global Pledge to Cut Methane Emissions*, Scientific American (Oct. 12, 2021), <https://www.scientificamerican.com/article/more-countries-join-global-pledge-to-cut-methane-emissions/>.

<sup>11</sup> Lisa Friedman, *More than 30 countries join U.S. pledge to slash methane emissions*, NYTimes (Oct. 11, 2021), <https://www.nytimes.com/2021/10/11/climate/methane-global-climate.html>.

<sup>12</sup> “Hazardous Materials: Liquefied Natural Gas by Rail,” Final Rule, 85 Fed. Reg. 44,994 (July 24, 2020); see also “Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail,” Notice of Proposed Rulemaking, 86 Fed. Reg. 61,731, at 61,734-35 (Nov. 8, 2021).

<sup>13</sup> Natural Resources Defense Council, *Sailing to Nowhere: Liquefied Natural Gas Is Not An Effective Climate Strategy*, at 4 (Dec. 2020), <https://www.nrdc.org/sites/default/files/sailing-nowhere-liquefied-natural-gas-report.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> 49 C.F.R. § 107.109(a)(8).

ETS' quarterly reports, obtained through a Freedom of Information Act request, show that ETS has not vigorously pursued using the Special Permit for transport. ETS is not in a position to transport LNG by rail or to do so in the near future, as it has not constructed its planned processing plant in Wyalusing Township, Pennsylvania. Moreover, the Gibbstown LNG Terminal (Dock 2) has not yet been constructed and the GLC has applied for new state permits for additional rail infrastructure. The LNG liquefaction plant in Wyalusing Township, required for the operation of the Gibbstown LNG Terminal, is also not yet constructed. Both projects may be even further delayed if FERC determines that it has jurisdiction over these two projects.

### **III. PHMSA Should Offer an Opportunity for Public Comment**

Under PHMSA regulations, no public comment opportunity is required when a permit is being renewed.<sup>16</sup> However, PHMSA may offer public participation opportunities in its discretion.<sup>17</sup> In this instance, PHMSA should provide the public with notice and a chance to comment on this highly controversial project, especially in light of the new information regarding the safety of the transportation of LNG by rail.

Public interest in the Special Permit is broad, diverse, and robust, as demonstrated by opposition to the Special Permit in the [letters](#), petitions, municipal and organizational resolutions, and other expressions of regional, local, [frontline and community opposition](#) submitted to PHMSA and the Biden Administration over the past year. Comments submitted to PHMSA during the public comment process for the Special Permit in 2019 presented substantial concerns regarding public safety and technical deficiencies from many quarters. Over many objections from the public, PHMSA granted the Special Permit.

In light of the new information regarding rail safety and greenhouse gas emissions associated with the project, the public should be afforded the opportunity to review the application, a draft permit, and other relevant materials and comment on the Special Permit. Communities located along the proposed transportation route need to be able to participate in a just and open decision making process before PHMSA on this highly controversial and high-stakes project.

The actions authorized by the Special Permit are reckless and ill-considered and pose unacceptable dangers that cannot be justified. What is known about the properties of

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<sup>16</sup> 49 C.F.R. § 107.109.

<sup>17</sup> See 49 C.F.R. § 107.113(d)-(e) (allowing the agency to request additional information from an applicant or impose other requirements on an application as “appropriate to protect health, safety, or property”); 49 C.F.R. § 107.105.

LNG justifies not renewing this Special Permit and comports with the reasons given by PHMSA for proposing to suspend the LNG by rail rule.

For these reasons, we urge PHMSA to deny the Energy Transport Solutions' application to renew Special Permit DOT-SP 20534. Thank you for your attention to this important matter.

Sincerely and respectfully submitted,

Representatives of the Delaware River LNG Coalition, in alpha order:

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Founder

Catskill Mountainkeeper  
Wes Gillingham  
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Clean Water Action  
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CC: Pete Buttigieg, Secretary of Transportation