



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Chris Guinta
Chief Financial Officer
Energy Transport Solutions, LLC
8350 NW 52nd Terrace, Suite 300
Doral, FL 33166

Dear Mr. Guinta:

This is in response to your November 29, 2021 Application for Renewal of DOT-SP 20534, which was issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on December 5, 2019 and expired by its terms on November 30, 2021.¹ In accordance with 49 CFR 107.113(e) and (g), PHMSA denies the Application for Renewal.

As ETS is aware, PHMSA, in November 2021, issued a notice of proposed rulemaking (NPRM)² for suspension of the July 2020 regulatory amendments³ that authorize rail tank car transportation of liquefied natural gas (LNG). The July 2020 LNG by Rail Final Rule imposed operational controls similar to those in DOT-SP 20534 and mandated use of a new rail tank car specification more robust than that required by the terms of DOT-SP 20534. The November 2021 NPRM states that new information — regarding potential risks to public safety and the environment, as well as commercial viability of rail tank car transportation of LNG — has become available since issuance of the LNG by Rail Final Rule.

PHMSA understands that new information casts doubt on the continued validity of the balance between potential benefits and risks (economic, public safety, and environmental) underpinning the LNG by Rail Final Rule, thereby warranting further evaluation of the adequacy of those operational controls and the enhanced rail tank car specification in controlling potential public safety and environmental impacts. The concerns outlined in the NPRM — regarding which ETS's Application for Renewal was silent — similarly militate against renewal of DOT-SP 20534.

PHMSA also notes that there is significant regulatory uncertainty in connection with the origin facility identified in DOT-SP 20534, thereby questioning the need for renewal. Specifically, a recent Securities and Exchange Commission filing by ETS's corporate parent New Fortress

¹ PHMSA regulations allow a special permit to remain effective during the pendency of PHMSA's review of a renewal application, provided that the renewal application has been submitted at least 60 days before scheduled expiration of the special permit. 49 CFR 107.109(b). Energy Transport Solutions, LLC (ETS) submitted its Renewal Application one day before scheduled expiration of DOT-SP 20534.

² 86 FR 61731 (Nov. 8, 2021) (NPRM). ETS did not submit comments in that rulemaking docket.

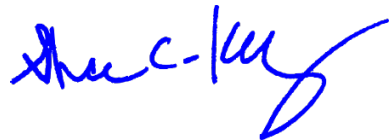
³ 85 FR 44994 (July 24, 2020) (LNG by Rail Final Rule).

Energy indicates that ETS will have to apply for updated state permits before construction activity at the site would be able to begin.⁴ The Wyalusing, PA facility is also the subject of a pending, contested petition for Declaratory Order filed with the Federal Energy Regulatory Commission (FERC) that may determine whether that facility requires a FERC certificate before operating as an LNG export terminal.⁵

Pursuant to 49 CFR 107.123, you may request that the Associate Administrator reconsider this decision under section 107.113(g). PHMSA regulations at 49 CFR 107.105 also allow ETS to apply for a new Special Permit, supported with updated information (including, but not limited to, any information responding to the concerns identified in the NPRM, and any proposed permit conditions for controlling public safety and environmental risks).⁶

If you have any questions, please call the Office of Hazardous Materials Safety, General Approvals and Permits Branch at (202) 366-4535.

Sincerely,



Shane C. Kelley

⁴ New Fortress Energy Inc., Form 10-K Annual Report (Mar. 1, 2023).

⁵ See FERC Docket No. CP20-524 (in re Petition for Declaratory Order of Bradford County Real Estate Partners LLC). Should FERC declare that an export facility certificate is needed, it could take an additional two years (or longer) to obtain that certificate from FERC.

⁶ Notwithstanding the issuance of DOT-SP 20534 more than two years ago, PHMSA is not aware of any binding commercial agreements either for the LNG that would be transported between its Wyalusing, PA, and Gibbstown, NJ, facilities, or for procurement of the rail tank cars needed for any such transportation of LNG. PHMSA understands it would take more than a year after entering into any such binding agreements before rail tank cars would be available, during which time ETS could apply for a new Special Permit. See Mele, “Future of Gibbstown-LNG Project Remains Far from Certain,” Delaware Currents (Mar. 10, 2023), <https://delawarecurrents.org/2023/03/10/gibbstown-lng-by-rail/>.