U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

June 10, 2022

Mr. Brannen McElmurray
New Fortress Energy
111 W 19th Street, 8th Floor
New York, NY 10011

Dear Mr. McElmurray:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA), dated March 28, 2022, you requested an interpretation of the Federal pipeline safety regulations in 49 Code of Federal Regulations (CFR) Part 192 with respect to the applicability of § 192.1 for a pipeline connecting a micro-fuel handling facility (facility) to the Puerto Rico Electric Power Authority power plant in San Juan, Puerto Rico.

You stated that the facility receives liquefied natural gas (LNG) from a vessel and then vaporizes the LNG into gas which flows through a 75-foot length pipeline that connects the facility to the power plant. The 75-foot length pipeline operates at a hoop stress of greater than 20 percent of specified minimum yield strength (SMYS), and there is no LNG storage within the facility. You referred to an August 2010 PHMSA interpretation letter to the Illinois Commerce Commission to support your opinion that the 75-foot length pipeline from the source of natural gas to the power plant is not regulated by the Federal pipeline safety regulations. You ask PHMSA's interpretation whether your 75-foot length pipeline is subject to the 49 CFR Part 192 requirements.

In response to your request the following definitions from § 192.3 are reprinted:

> *Operator means* a person who engages in the transportation of gas.
>
> *Transmission line means* a pipeline, other than a gathering line, that:
> (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center;
> (2) operates at a hoop stress of 20 percent or more of SMYS; or
> (3) transports gas within a storage field.
>
> NOTE: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

Your interpretation request heavily relies on PHMSA's 2010 interpretation to the Illinois Commerce Commission. As we noted in that interpretation, the letter reflected the agency's current application of the regulations to the specific facts presented by the person requesting the clarification without legally enforceable rights or obligations. The 2010 interpretation addressed questions regarding the ultimate consumer and pipelines within the consumer's properties, including in-plant piping. PHMSA is consistent in applying regulatory requirements to pipelines up to the point where pressure control changes from the pipeline operator to the consumer facility which can be on the grounds of the facility.

Unlike the facts presented in the 2010 interpretation, New Fortress Energy is not the end user of the gas, and its pipeline is not used to move gas between its own facilities. New Fortress Energy is transporting gas from its source to the ultimate consumer (i.e., the power plant) who purchases the gas. Therefore, New Fortress Energy is engaged in the transportation of gas by pipeline.

The regulatory requirement for the pipeline operator ends at the point where the gas transmission pipeline delivers gas or transfers gas to an end user (customer or power plant) at the power plant's facility which could be on the grounds of the power plant facility. The New Fortress Energy pipeline from the source of gas (vaporizers outlet piping) to the point where it delivers gas to the power plant facility is regulated by the Federal pipeline safety regulations as a transmission line based on the § 192.3 ((2) operates at a hoop stress of 20 percent or more of SMYS) definition of a transmission line.[1]

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

JOHN A GALE

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Date: 2022.06.14 08:28:55 -04'00'

John A. Gale
Director, Office of Standards
and Rulemaking

[1] New Fortress Energy stated in its interpretation request to PHMSA that the pipeline operates at or above 20 percent SMYS.

111 W 19TH STREET, 8TH FLOOR
NEW YORK, NY 10011

March 28, 2022

Via Email and FedEx

Alan Mayberry
Associate Administrator, Office of Pipeline Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety
Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Request for Part 192 Jurisdiction Interpretation

Dear Mr. Mayberry:

This is a request for an interpretation regarding NFEnergía LLC's ("NFE") 75-foot piping connecting the Micro-Fuel Handling Facility (the "Facility") located in San Juan, Puerto Rico to the Puerto Rico Electric Power Authority ("PREPA") San Juan Power Plant that is geographically contiguous.

Pursuant to 49 C.F.R. 190.11(b), we hereby submit a request for an interpretation from the Pipeline and Hazardous Materials Safety Administration ("PHMSA") that the 75-foot piping that connects our vaporizers to the geographically contiguous PREPA property is not subject to 49 C.F.R. Part 192 because the delivery of vaporized natural gas to PREPA's San Juan Power Plant is not a "transportation of natural gas" as PHMSA has historically interpreted that term. As PHMSA requested, NFE is simultaneously submitting a notification under 49 C.F.R. 191.22 seeking an operator identification number for the Facility, and it looks forward to engaging with your team on that process while PHMSA considers our request for an interpretation.

Regulatory Language Assessment

By way of background, NFE notes that the term "Pipeline Facilities" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the *transportation* of gas or in the *treatment* of gas during the course of transportation (49 CFR 192.3). A pipeline means all parts of those physical facilities through which gas moves in transportation, including pipes, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, etc. (49 CFR 192.3). The regulations define transportation to mean the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce (49 CFR 192.3).

From our discussions with Director McDaniel of the Southwest Region, we understand that PHMSA is asserting that the 75-foot line connecting the Facility to the immediately adjacent San Juan Power Plant is a transmission line within the meaning of 49 C.F.R. 192.3. A transmission

line is a pipeline, other than a gathering line, that (1) transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of specified minimum yield stress ("SMYS"); or (3) transports gas within a storage field (49 CFR 192.3). As we explained, the Facility receives LNG from a vessel, has no on-site storage, and is not located within a "storage field"; however, the line does currently operate at a hoop stress of more than 20 percent of SMYS.

Nevertheless, the delivery of the natural gas within 75 feet of process piping to the property line of the PREPA San Juan Power Plant does not move in "transportation" within the meaning of that term as PHMSA has historically applied it. Indeed, as we discussed, PHMSA advised a state regulator in 2010 that its Part 192 regulations did not reach piping operated in very similar circumstances. NFE acknowledges your view that the circumstances at issue for the Facility are not similar to what was at issue in that 2010 letter. What follows will explain NFE's view as to why this interpretation applies to the movement of the vaporized natural gas 75 feet from NFE's vaporizers to the connection with the San Juan Power Plant's process piping.

Assessment of PHMSA's Statement to the Illinois Commerce Commission

We have re-reviewed the August 11, 2010 PHMSA letter responding to the Illinois Commerce Commission's request regarding the United States Steel Corporation's Granite City Works ("GCW") steelmaking complex. This letter of interpretation evinces PHMSA's policy regarding the application of the pipeline safety laws to piping that runs between industrial facilities. The factual situation presented by GCW goes well beyond the Facility's configuration:

> The [United States Steel] natural gas piping system contains several service lines, each service line transporting gas from a common source of supply (a main) to an individual customer. All the customers are owned by USS, but each customer is responsible for the amount of gas it uses.

See Attachment "A." Thus, the GCW complex involved the movement of gas from a central location to other facilities owned and operated by other customers, several of whom metered their deliveries. These facts make it clear that these facilities were likely run by separate entities (albeit affiliates) and that some manner of compensation or accounting tracked these gas deliveries. The GCW operation actually much more resembles "transportation" than the Facility does here as it delivered gas to multiple facilities including several that were not located on contiguous properties as Attachment A demonstrates.

In the statement, PHMSA explained that "its typical rule" was that a "pipeline transporting gas to a destination facility such as a large volume customer is subject to the pipeline safety laws and regulations up to the point where pressure control changes from the pipeline operator to the destination facility operator." This letter further explained that "beyond that point, piping operated by the facility operator entirely on the grounds of the facility is considered 'in-plant piping' and would not be subject to the pipeline safety regulations, although it may be subject to State building codes or other regulations." The situation addressed by the 2010 letter, however, involved

pipelines that "are not located entirely on the geographically contiguous grounds of a facility." In fact, such pipelines crossed public areas for "relatively short distances."

PHMSA advised the state that such lines are "subject to" pipeline safety laws because they cross public areas but that PHMSA's policy was not to apply its laws to such piping. As PHMSA explained:

> Historically, PHMSA has elected not to apply the Federal gas pipeline safety regulations to such lines if they are associated with the plant, meaning that they are operated by plant personnel, run between plant buildings, and are less than one mile in length.

Here, the Facility's 75-feet of process piping delivers natural gas to a single enterprise located across the fence line that is owned and operated by the San Juan Power Plant. The deliveries to a single, geographically contiguous neighbor are obviously less extensive than the multiple customers involved in the GCW complex who were not on geographically contiguous properties.

Unlike the GCW complex, however, the Facility's 75-feet of process piping does not cross publicly accessible roads or highways once, let alone multiple times. Nor does the Facility service multiple customers. Instead, it runs a single set of process piping up to the delivery point to the San Juan Power Plant, which is on the NFE property. *See* Attachment "B." Moreover, the delivery point is within the NFE property. *See* Attachment "C." Accordingly, up to this delivery point, the pipeline is located on the "geographically contiguous grounds" of the Facility. At that point, it is accepted by PREPA and carried in the piping the short distance to the San Juan Power Plant burners. *See* Attachment "D."

Additionally, NFE plant personnel are responsible for operating the pipeline and managing the delivery of the natural gas to the delivery point. From that point on, the management of the natural gas is handled by a separate operator, PREPA. Although NFE and PREPA share information regarding natural gas pressures, volume and other metrics, operations are separate between the piping on NFE and PREPA's property. Finally, the pipe is far, far less than one mile in length. The piping that connects the Facility to its immediately adjacent neighbor thus satisfies all of the main elements of the test that PHMSA set out to the Illinois Commerce Commission: the piping is operated by plant personnel; it runs between the Facility and the San Juan Power Plant and it is far less than one mile in length.

In fact, the Facility and San Juan Power Plant are indistinguishable from the piping at issue in the 2010 letter. All of the piping at issue here is process piping and is located entirely within each party's respective property boundaries of the two immediately adjacent industrial facilities. NFE designed the piping to PREPA's process piping standards and much of the piping on the Facility is already subject to other regulatory regimes, including oversight by the United States Coast Guard, territorial authorities (including the Puerto Rico Department of Transportation and Public Works) and the state fire marshal. Regardless of whether NFE and PREPA are affiliated like the entities at issue in GCW, all of the objective facts show that the location, management, and use of the pipelines meet the standard that PHMSA set out to the Illinois Commerce Commission. Moreover, even though they are not affiliates, NFE and PREPA have a written

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agreement for the delivery of the gas via the process piping. These enforceable contractual rights establish a commercial relationship that reflects many of the same obligations that companies might impose internally or on their affiliates.

Likewise, the fact that the piping operates at more than 20% SMYS should not change the outcome because in PHSMA's own view, it is irrelevant to whether the piping can be said to be subject to pipeline safety laws. Indeed, PHMSA issued its interpretation in 2010 without knowing the pressure at which the piping operated or discussing any SMYS threshold. PHMSA explained that whether the piping qualified as "a transmission line or a distribution line" was immaterial to the outcome:

> PHMSA has not taken a position on that since we currently do not regulate such lines as stated above.

Interestingly, PHMSA has also reached this conclusion without any analysis of where any pressure controls may have been located at the GCW facilities that received the gas. NFE's dealings with the PHMSA Southern region in 2019 and 2020 plainly track the historical interpretation discussed in this letter. On each of these occasions, NFE explained to PHMSA the configuration of the piping connecting the Facility to the San Juan Power Plant. In neither instance did NFE hear anything further from PHMSA about the regulation of these lines. As a result, it is clear that PHMSA should reach a similar conclusion here.

We look forward to further discussion of this matter. Should you have any additional questions or if it would be helpful to further discuss any of the above information, please feel free to contact me at 516-268-7413 or bmcelmurray@newfortressenergy.com. We may also be contacted at our return address, 111 W 19th Street, 8th Floor, New York, NY 10011.

Sincerely,

NFEnergía LLC

Brannen McElmurray
Authorized Signatory

CC:
John A. Gale
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