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

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

JUN 23 2014

Ms. Sheila S. Hollis
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Dear Ms. Hollis:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated January 7, 2014, you requested a determination about the applicability of 49 CFR Part 192 to a proposed Aguirre Offshore GasPort project ("Project"). You stated that the Project is being developed by Aguirre LLC, a wholly owned subsidiary of Excelerate Energy, in cooperation with the Puerto Rico Electric Power Authority. The Project will be located in Salinas, along the southern shore of the Commonwealth of Puerto Rico, in Commonwealth waters, and will include certain facilities to import, store and vaporize liquefied natural gas and to deliver the vaporized natural gas by pipeline to an on-shore Aguirre Power Complex as fuel for power generation in the Commonwealth. The Project will consist of: (1) an Energy Bridge Regasification Vessel that functions as a floating storage and regasification unit, (2) an offshore berthing platform, and (3) an approximately 4.1 mile-long subsea natural gas pipeline that connects the offshore berthing platform to the Aguirre Power Complex.

You stated that on April 17, 2013, Aguirre LLC submitted an application, pursuant to Section 3 of the Natural Gas Act, to the Federal Energy Regulatory Commission ("FERC") to site, construct and operate an LNG terminal. You asserted that FERC regulates the berthing platform and the Interconnecting Pipeline. As a result, the Interconnecting Pipeline is subject to PHMSA's authority under 49 CFR Part 192 because it is an interstate gas pipeline facility as defined in the Natural Gas Pipeline Safety Act ("NGPSA") and other Federal pipeline safety laws, as amended in 49 USC § 60101, et seq. You asked whether the new pipeline would be regulated by PHMSA.

The interconnecting pipeline falls within the definition of "pipeline facility." However, states (including Puerto Rico, as defined in the 49 USC statute) can only regulate "an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority" participating in the state pipeline safety certification program established under the NGPSA. In the NGPSA, an intrastate pipeline facility is "a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the FERC under the Natural Gas Act (15 U.S.C. 717 et seq.)." Therefore, the issue as to whether PHMSA or the

Commonwealth of Puerto Rico regulates the pipeline under Part 192 is based upon by the pipeline's interstate or intrastate designation.

49 USC § 60101(a)(6) defines interstate pipeline as:

> § 60101. Definitions
> (a) General.--In this chapter--
> ...
> (6) "interstate gas pipeline facility" means a gas pipeline facility—
> (A) used to transport gas; and
> (B) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

Then 15 USC § 717(b) states:

> § 717. Regulation of natural gas companies
> ...
> (b) Transactions to which provisions of chapter applicable
> The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and *to the importation or exportation of natural gas in foreign commerce* and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

It is PHMSA's understanding that the natural gas is imported in foreign commerce. Under both 49 USC § 60101(a)(6) and 15 USC § 717(b), the 4.1 mile natural gas pipeline likely meets the requirements for an interstate pipeline. Assuming that the pipeline is subject to FERC's jurisdiction, the Interconnecting Pipeline would be an interstate pipeline facility regulated by PHMSA under Part 192.

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

Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking

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January 7, 2014

VIA HAND DELIVERY AND E-MAIL

Mr. Jeffrey D. Wiese
Associate Administrator for Pipeline Safety
Office of Pipeline Safety (PHP-1)
Pipeline and Hazardous Materials Safety
Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington DC 20590-0001

Re: Request for 49 C.F.R. Part 192 Interpretation and for Expedited Consideration

Dear Mr. Wiese:

Pursuant to 49 C.F.R. §§ 190.11(b)(1) and 190.11(b)(2) (2013), Aguirre Offshore GasPort, LLC ("Aguirre LLC"), through its undersigned counsel, hereby requests a determination with respect to the applicability of 49 C.F.R. Part 192 ("Part 192") to the proposed Aguirre Offshore GasPort Project, as described below.

I. Background

The Aguirre Offshore GasPort Project (the "Project") is being developed by Aguirre LLC, a wholly owned subsidiary of Excelerate Energy, L.P. ("Excelerate Energy"), in cooperation with the Puerto Rico Electric Power Authority ("PREPA"). The Project will be located in Salinas, along the southern shore of the Commonwealth of Puerto Rico, in Commonwealth waters, and will include certain facilities to import, store and vaporize liquefied natural gas ("LNG") and to deliver the vaporized natural gas by pipeline to PREPA's on-shore

Aguirre Power Complex, where it will be used as fuel for power generation.[1] The Project will consist of the following major components: (1) an Energy Bridge Regasification Vessel ("EBRV") functioning as the Project's Floating Storage and Regasification Unit ("FSRU"); (2) an offshore berthing platform; and (3) an approximately 4.1 mile-long subsea natural gas pipeline connecting the offshore berthing platform to the Aguirre Power Complex ("Interconnecting Pipeline").

On April 17, 2013, Aguirre LLC submitted an application to the Federal Energy Regulatory Commission ("FERC") pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. § 717b, to site, construct and operate an LNG terminal.[2] As used in Section 3 of the NGA, the term "LNG terminal" is defined as follows:

> "LNG terminal" includes *all natural gas facilities* located onshore or in State waters that are used to receive, unload, load, store, *transport*, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—
> (A) *waterborne vessels used to deliver natural gas to or from any such facility*; or
> (B) any pipeline or storage facility subject to the jurisdiction of the Commission under section [7, 15 U.S.C. §717f].[3]

In accordance with this definition, Aguirre LLC's FERC-jurisdictional "LNG terminal" is proposed to include the berthing platform *and* the Interconnecting Pipeline.

Under the NGA and the National Environmental Policy Act ("NEPA"), the FERC is the lead agency for the environmental review of the Project. On April 30, 2013, the FERC issued a notice of Aguirre LLC's application.[4] The FERC proceeding is currently at an advanced stage and it is expected that a "*Notice of Schedule for Environmental Review of the Aguirre Offshore GasPort Project*" will be issued in the near future. As required by NEPA, the FERC process provides for an important role by cooperating agencies, including PHMSA.

In November 2013, Aguirre LLC became aware of certain questions raised by the Office of Pipeline Safety – Southern Region ("OPS-Southern Region") with respect to PHMSA's Part 192 jurisdiction over the Project, particularly with respect to the Interconnecting Pipeline. The

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1 The 1,492 megawatt ("MW") Aguirre Power Complex is the largest electricity generating facility in Puerto Rico.

2 *See* Application for Authorization to Site, Construct and Operate Liquefied Natural Gas Import Terminal Facilities, Docket No. CP13-193-000 (April 17, 2013) (the "Application"). A public copy of the Application is available at the FERC's eLibrary website: http://www.ferc.gov/docs-filing/elibrary.asp. A copy of the Application (excluding exhibits) is attached hereto at Appendix 1.

3 15 U.S.C. § 717a(11) (emphasis added).

4 *See* Notice of Application, Docket No. CP13-193-000 (April 30, 2013).

instant Request is submitted at the suggestion of OPS-Southern Region to clarify this important jurisdictional issue.

II. Legal Analysis

Aguirre LLC submits that the Interconnecting Pipeline is subject to PHMSA's jurisdiction under Part 192 because it is an interstate gas pipeline facility, as defined in the Natural Gas Pipeline Safety Act and other federal pipeline safety laws, as amended, 49 U.S.C. § 60101, *et seq.* ("NGPSA"). This conclusion follows from the express language of the statute and the PHMSA regulations and is consistent with PHMSA's prior determinations with respect to the applicability of Part 192 to similar pipeline facilities.

A. The NGPSA Requires That PHMSA Assume Jurisdiction under Part 192 with Respect to the Interconnecting Pipeline.

Part 192 implements the minimum federal safety standards requirements of the NGPSA. As amended and revised, the statute vests the authority over pipeline safety in the Secretary of Transportation.[5] This authority is delegated to PHMSA.[6]

The statute provides that the Secretary of Transportation "shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities."[7] The term "pipeline facility" is defined and means, *inter alia*, a "gas pipeline facility,"[8] which is defined in turn as "a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation."[9] The terms "pipeline transportation" and "transporting gas" mean, in pertinent part, "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce," but excluding certain gathering of gas.[10] The terms "interstate or foreign commerce" mean "commerce – (i) between a place in a State and a place outside that State; or (ii) that affects any [such] commerce."[11] The statute expressly defines the term "State" to include Puerto Rico.[12]

Consistent with these NGPSA definitions, Part 192 defines its scope as follows: "*This part prescribes minimum safety requirements for pipeline facilities and the transportation of gas*, including pipeline facilities and the transportation of gas within the limits of the outer continental shelf as that term is defined in the Outer Continental Shelf Lands Act."[13] As used in Part 192,

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5 49 U.S.C. § 60102(a)(1).
6 49 C.F.R. § 1.97(a).
7 49 U.S.C. § 60102(a)(2).
8 49 U.S.C. § 60101(a)(18).
9 49 U.S.C. § 60101(a)(3).
10 49 U.S.C. §§ 60101(a)(19) and (21).
11 49 U.S.C. § 60101(a)(8)(A).
12 *See* 49 U.S.C. § 60101(a)(20). Similarly, Part 192 defines Puerto Rico as a "State." *See* 49 C.F.R. §192.3.
13 49 C.F.R. §192.1(a) (emphasis added).

the terms "pipeline facility" and "transportation of gas"[14] are practically identical to the terms "gas pipeline facility" and "transporting gas" as defined in the NGPSA. Accordingly, the scope of Part 192 is broad and applies to both onshore and offshore pipeline facilities (including those located on the Outer Continental Shelf),[15] subject to certain established exceptions[16] none of which, to Aguirre LLC's knowledge, is applicable to this Project.

As explained above, the Interconnecting Pipeline is proposed to be included in the "LNG Terminal" for the Project, as defined in the NGA, and will be subject to the FERC's exclusive jurisdiction under Section 3 of the NGA. For this reason, the Interconnecting Pipeline is a "gas pipeline facility" that will be used in the "transmission, or distribution of gas by pipeline . . . in interstate or foreign commerce" and is subject to PHMSA's jurisdiction under Part 192.[17]

B. PHMSA's Prior Determinations Are Consistent with This Conclusion.

PHMSA's assumption of Part 192 jurisdiction under the Interconnecting Pipeline is consistent with certain prior interpretations issued in similar circumstances. In PHMSA Interpretation #PI-09-0009 (June 24, 2009),[18] PHMSA addressed a request for interpretation by Marathon Pipe Line, L.L.C. ("Marathon") and concluded that a pipeline connecting an offshore platform owned by Marathon and located in Alaska's Cook Inlet to the shore was subject to Part 192.[19] As explained by PHMSA:

> You asked whether a pipeline you use to supply gas to an offshore platform is subject to Part 192. . . . You indicated that you believe that Part 192 does not apply to your pipeline because you are the consumer, transporter and owner of the gas used on the platform.
>
> Pursuant to Chapter 601, Title 49, United States Code, PHMSA has responsibility for protecting against risks to life, property, and the environment posed by pipelines. In carrying out its responsibilities, PHMSA has established design, construction, operation, and maintenance standards and regulations for gas pipelines and has responsibility for enforcing these requirements. Under 49 U.S.C. 60102(a)(l) and (2), these standards and

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14 49 C.F.R. §192.3.

15 Under 49 C.F.R. §192.159(a), "*Includes* means including *but not limited to*."

16 These exceptions are set forth at 49 C.F.R. §192.1(b).

17 Aguirre LLC notes that some components of the Project, *other than the Interconnecting Pipeline*, could constitute an "LNG facility," as defined in Part 193 of PHMSA's regulations, 49 C.F.R. § 193.2001, *et seq.* *See* 49 C.F.R. § 193.2007 ("*LNG facility* means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.") To the extent that Part 193 is held to be inapplicable to the Project because of its location in navigable waters, as set forth in 49 C.F.R. § 193.2001(b)(4) (2013), Aguirre LLC submits that the inapplicability of Part 193 has no bearing on the scope of PHMSA's Part 192 jurisdiction over the Interconnecting Pipeline.

18 A copy of PHMSA Interpretation #PI-09-0009, including the underlying request, is attached hereto at Appendix 2.

19 The gas flowed in the opposite direction (*i.e.*, toward the platform), but this distinction is immaterial for purposes of the instant jurisdictional analysis.

regulations apply to both "pipeline transportation" and "pipeline facilities." The definition of pipeline transportation includes the gathering, transmission, and distribution of gas, and the definition of a gas pipeline facility includes "a pipeline, a right-of-way, a facility, building, or equipment" to be used in transporting gas (49 U.S.C. 60101 (a)(3)).

You provided the following background information in support of your request: Marathon owns and maintains an offshore platform (Spark Platform) that is no longer used to produce gas. The Spark Platform receives gas from a 6-inch offshore pipeline which becomes a 3-inch onshore pipeline (collectively, "Platform Line"). Marathon operates the Platform Line at 990 psig. Gas usage is metered on the platform and typically indicates platform consumption of 300 mcf per month. The Platform Line receives gas from a 16-inch transmission line. Marathon operates the transmission line and jointly owns the line with another company. The transmission line transports gas produced by Marathon, the second owner and, occasionally, other companies.

Our responses to your requests for interpretation are as follows:

Question - Does Part 192 apply to the Platform Line?

Answer- Yes. The Pipeline Safety Laws (49 U.S.C. 60101 et seq.) and 49 C.F.R. Part 192 provide for safety regulation of pipeline facilities and the transportation of gas, without regard to who owns the gas. A sale of the gas is not required. Therefore, gas can be in transportation even if it is produced, transported and consumed by the same entity. [20]

The Marathon interpretation is particularly significant because the platform in that case apparently was located in State waters (*i.e.*, Alaska's Cook Inlet) just like the Aguirre LNG Terminal; and yet Part 192 was found to be applicable.

C. Under the NGPSA, Puerto Rico Does Not Have Jurisdiction to Regulate the Interconnecting Pipeline.

The NGPSA provides for a division of responsibilities between federal and State authorities with respect to pipeline safety. However, States (including Puerto Rico, as defined in the statute) can regulate only "an *intrastate* pipeline facility or *intrastate* pipeline transportation to the extent that the safety standards and practices are regulated by a State authority" participating in the State pipeline safety certification program established under the NGPSA.[21] While Puerto Rico participates in such a program,[22] the law is clear that this authority can be

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[20] Appendix 2, PHMSA Response Letter, PHMSA Interpretation #PI-09-0009 (June 24, 2009), also available at http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Interpretation%20Files/Pipeline/2009/PI-09-0009.pdf.

[21] 49 U.S.C. § 60105(a) (emphasis added).

[22] *See* http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c/?vgnextoid=60

exercised only with respect to an *intrastate* facility or transportation. These terms are defined in the NGPSA as "a gas pipeline facility and transportation of gas within a State *not subject to the jurisdiction of the [FERC] under the [NGA].*"[23] In this case, however, the Interconnecting Pipeline will be included in the Project's "LNG Terminal" and, as such, will be subject to the FERC's jurisdiction under Section 3 of the NGA. For this reason, the Interconnecting Pipeline would not be an "intrastate pipeline facility" under the NGPSA, and Puerto Rico cannot have pipeline safety jurisdiction over it.[24]

This conclusion is further confirmed by the statutory preemption of State pipeline safety regulation of *interstate* pipeline facilities. To that effect, the NGPSA states as follows:

> A State authority that has submitted a current certification under section 60105 (a) of this title may adopt additional or more stringent safety standards for *intrastate* pipeline facilities and *intrastate* pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. *A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.*[25]

Because the Interconnecting Pipeline is proposed to be included in Aguirre LLC's LNG Terminal that is subject to the jurisdiction of the FERC under Section 3 of the NGA, it will be an interstate facility used in "interstate or foreign commerce." Puerto Rico, therefore, cannot have jurisdiction under the NGPSA with respect to such an interstate facility.

III. Request for Expedited Consideration

Aguirre LLC respectfully requests expedited consideration of this submission. As explained herein, Aguirre LLC's FERC Application has reached an advanced stage in the NEPA process. For this reason, it is critical that Aguirre LLC, the FERC and the cooperating agencies have the requisite clarity with respect to the jurisdictional boundaries applicable to the Project and all of its components. Accordingly, granting expedited treatment for this Request is in the public interest.

IV. Notice and Communications

Please direct all communications with respect to this submission to the following persons:

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23 49 U.S.C. § 60101(a)(9) (emphasis added).

24 In fact, applicants in a proceeding under NGA Section 3 are required to certify that they will construct and maintain their gas pipeline facility in accordance with applicable safety standards. *See* 49 U.S.C. § 60104(d)(2).

25 49 U.S.C. § 60104(c) (emphasis added).

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V. Conclusion

Based on the foregoing, PHMSA should find that it has jurisdiction under Part 192 over the Interconnecting Pipeline component of the Project, as described above. If you have any questions about this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

Ilia Levitine (for SSH)

Sheila S. Hollis
Ilia Levitine

Counsel for
Aguirre Offshore GasPort, LLC

IL:slk
Appendices 1 and 2

Cc: Mr. Mike Trammel, Excelerate Energy
Mr. Michael J. Khayata, OPS –Southern Region

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APPENDIX 1

Aguirre LLC's FERC Application

(w/o exhibits)

IN THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Aguirre Offshore GasPort, LLC	)	**Docket No. CP13-____-000**

APPLICATION OF AGUIRRE OFFSHORE GASPORT, LLC FOR AUTHORIZATION UNDER SECTION 3 OF THE NATURAL GAS ACT TO SITE, CONSTRUCT AND OPERATE LIQUEFIED NATURAL GAS IMPORT TERMINAL FACILITIES

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Dated: April 17, 2013

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IN THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Aguirre Offshore GasPort, LLC	)	**Docket No. CP13-____-000**

APPLICATION OF AGUIRRE OFFSHORE GASPORT, LLC
FOR AUTHORIZATION UNDER SECTION 3 OF THE NATURAL GAS ACT
TO SITE, CONSTRUCT AND OPERATE
LIQUEFIED NATURAL GAS IMPORT TERMINAL FACILITIES

Pursuant to Section 3 of the Natural Gas Act ("NGA"), as amended,[1] and Parts 153 and 380 of the regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[2] Aguirre Offshore GasPort, LLC ("Applicant")[3] hereby files this application for authorization to site, construct and operate certain liquefied natural gas ("LNG") import terminal facilities ("Application"), including a 4.1-mile subsea interconnecting natural gas pipeline, to be located in Salinas, along the southern shore of the Commonwealth of Puerto Rico, in Commonwealth waters (collectively, "LNG Terminal"). The LNG Terminal facilities subject to this Application are a part of the Aguirre Offshore GasPort Project ("Project" or "Aguirre Project"), which will include, in addition to the proposed LNG Terminal, a non-jurisdictional Energy Bridge Regasification Vessel ("EBRV") functioning as the floating storage and regasification unit ("FSRU") for the Project.

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1 15 U.S.C. § 717b (2006).
2 18 C.F.R. Parts 153 and 380 (2012).
3 The Applicant is a wholly-owned subsidiary of Excelerate Energy L.P. ("Excelerate Energy") created for the purpose of owning and/or operating the Aguirre Project.

The Applicant is developing this Project in cooperation with the Puerto Rico Electric Power Authority ("PREPA")[4] to supply PREPA's Aguirre Power Complex ("Aguirre Power Plant") with natural gas as an alternative fuel to produce electricity for Puerto Rico's commercial, industrial and residential customers. The Aguirre Power Plant, which is the largest power generating facility on the island, currently utilizes fuel oil and diesel fuel to produce electric energy. As detailed in this Application, the need for a cleaner and less expensive alternative to fuel oil to generate electricity is acute and widely acknowledged in Puerto Rico. To meet this demand and help PREPA implement its corporate strategy, the Project will provide up to 3.2 billion cubic feet ("Bcf") of LNG storage capacity and a sustained deliverability of 500 million standard cubic feet per day ("MMscf/d"), with a peak deliverability of 600 MMscf/d of natural gas directly to the Aguirre Power Plant. This proposal is critical to obtaining the full benefits of the Aguirre Power Plant's planned transition to a more efficient and environmentally friendly fuel. Consequently, the Commission's approval of the instant Application will substantially contribute to meeting Puerto Rico's energy and environmental needs.

The Applicant plans to commence construction of the proposed LNG Terminal facilities in April 2014, with an anticipated in-service date occurring in March 2015. This schedule reflects certain important policy and environmental compliance imperatives further discussed below, and it will permit the Applicant to coordinate the construction and commissioning of the Project with PREPA's conversion of the Aguirre Power Plant to a dual-fuel capability. Accordingly, the Applicant respectfully requests that the Commission issue a final order

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[4] PREPA is a public corporation founded in 1941 "to provide electric energy services to customers [in Puerto Rico] in the most efficient, cost-effective and reliable manner in harmony with the environment." *See* www.prepa.com/aeees_eng.asp.

approving this Application no later than March 1, 2014, to enable the Applicant to commence construction shortly thereafter.

I. EXECUTIVE SUMMARY

The Applicant is proposing to develop, construct, own and operate an LNG Terminal, as described in this Application, which will be an integral part of the Aguirre Project. The proposed facilities will be located in Salinas, along the southern shore of the Commonwealth of Puerto Rico, in Commonwealth waters, approximately three miles from the shore. The Aguirre Project will consist of: (1) a jurisdictional LNG Terminal, which will be comprised of an offshore berthing platform and a short subsea interconnecting pipeline; and (2) a non-jurisdictional EBRV to be operated by the Applicant and functioning as the FSRU for the Project, as well as certain minor non-jurisdictional on-shore natural gas interconnection and receiving facilities. The Applicant will utilize Excelerate Energy's proven Energy Bridge™ technology to receive, store and vaporize LNG for the delivery of natural gas to the Aguirre Power Plant.

The Aguirre Project is being developed at the request of, and in close cooperation with, PREPA. Under the proposed arrangements, the Project will supply natural gas directly to the 1,492 megawatt ("MW") Aguirre Power Plant,[5] which represents approximately one third of Puerto Rico's total installed generating capacity. PREPA will contract for 100 percent of the available capacity (storage and delivery throughput) of the Project. As a result, successful completion and commissioning of the Project will allow PREPA to effectuate its planned conversion of the Aguirre Power Plant from a fuel-oil only to a dual-fuel generation facility, capable of burning diesel and natural gas for the combined cycle and fuel oil and natural gas for the thermoelectric plant.

[5] The Aguirre Power Plant includes two 296 MW combined cycle units and a 900 MW thermoelectric plant.

This proposal is an important element in PREPA's strategy to reduce Puerto Rico's reliance on costly imported fuel oil as the primary energy source for electricity generation on the island. The 2010 Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act ("Energy Diversification Act"),[6] which requires that a certain portion of the energy sold comes from renewable sources, acknowledged, in its Statement of Motives, that "nearly seventy percent (70%) of the electric power generated in Puerto Rico derives from oil." As a result of this unsustainable dependence on imported oil, the cost of electricity on the island "rank[s] among the highest and most volatile in comparison with other jurisdictions," which, according to the Statement of Motives, adversely affects the quality of life and environment in Puerto Rico, as well as the economic competitiveness of its businesses. While renewable energy represents Puerto Rico's desired long-term future, PREPA's Corporate Strategic Plan 2011-2015 establishes the diversification of energy sources to reduce the use of fuel oils as one of its main goals and immediate tasks. A major element of this strategy is the ongoing conversion of Puerto Rico's oil-burning generating facilities, such as the Aguirre Power Plant, from petroleum to cleaner, safer and cheaper natural gas.

Implementing the Aguirre Power Plant's partial transition to natural gas is critical to PREPA attaining compliance with its increasing federal environmental obligations. On February 16, 2012, the U.S. Environmental Protection Agency ("EPA") promulgated a rule establishing certain Mercury and Air Toxics Standards ("MATS")[7] for most new and existing coal- and oil-

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[6] S.B. 1519, Act No. 82 (approved July 19, 2010) (available through the Commonwealth's Office of Legislative Services at http://www.oslpr.org/download/en/2010/A-0082-2010.pdf).

[7] *See National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standard of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 77 Fed. Reg. 9,304 (February 16, 2012) ("MATS Rule"). The MATS Rule became effective on April 16, 2012. Certain aspects of the MATS Rule that apply to new emission sources were subsequently modified on reconsideration. *See Reconsideration of Certain New Source Issues: National Emission Standards for Hazardous Air Pollutants*

fired power generation facilities. These new regulations will directly impact the Aguirre Power Plant, as PREPA and other affected utilities are expected to be in compliance with the MATS Rule by April 2016 at the latest.[8] Failure to comply with the MATS Rule can result in sanctions, fines and cease-and-desist orders, thereby potentially endangering the reliability, stability and efficiency of Puerto Rico's electric system. It is the Applicant's understanding that PREPA views this Project as the only feasible means to timely comply with the MATS Rule.

Another positive effect of the Project will be reduced fuel oil barge traffic in Jobos Bay. Fuel oil is currently delivered to the Aguirre Power Plant by barge, amounting to three to four fuel barge deliveries per week, or 150 to 200 barge trips (ingress and egress) per year. After PREPA completes its conversion of the Aguirre Power Plant, and the Project is placed in service, fuel oil barge deliveries are estimated to decline by as much as 90 percent, to 15 to 20 trips per year, due to natural gas deliveries from the Project. Using the proposed LNG Terminal (including the interconnecting subsea pipeline) to deliver natural gas to the Aguirre Power Plant will improve the reliability of PREPA's fuel supply and will reduce the potential for fuel spills while diminishing encounters with certain endangered species and recreational boat traffic.

The location for the Aguirre Project, including the subsea pipeline route, was carefully determined to minimize potential environmental impacts. As explained in the Application and the supporting Exhibits, numerous broad-based field studies of the Project area have been performed. The studies covered a broad scope of environmental, geological and cultural aspects

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From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standard of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units (March 28, 2013).

[8] The MATS Rule grants generating plants until April 2015 to be in compliance with the new standards. Some units will be eligible for a one year extension (*i.e.*, until April 2016) granted by the state entity in charge of regulating emissions. *See National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units*, 77 Fed. Reg. 9,304, at 9,407.

including metocean, biological, social, geophysical, geotechnical, archaeological and in-air noise. Information obtained from these studies was used to assess and refine the LNG Terminal and FSRU location, as well as the pipeline route, with a view to minimizing potential impacts to the people and environment affected by the Project. Because the Project will consist of primarily offshore facilities, almost no upland area will be disturbed. The connecting subsea pipeline will terminate at the Aguirre Power Plant, and any upland impacts will occur on lands already owned by PREPA, which are designated for industrial use and have been used for that purpose for the past 40 years. Consequently, no landowners other than PREPA will be affected by the Project.

The Application involves a jurisdictional issue of first impression. Under this proposal, the FSRU is not included in the FERC-certificated LNG Terminal facilities because it is a statutorily exempt, non-FERC jurisdictional "waterborne vessel used to deliver natural gas to or from [an LNG terminal] facility,"[9] and it is subject to extensive regulation by the U.S. Coast Guard ("USCG"). Section III.B of the Application explains in detail the legal requirements and the operational, regulatory and commercial considerations that support the FSRU's status as a non-FERC jurisdictional waterborne vessel. Nonetheless, the Applicant acknowledges the novelty of the issue[10] and recognizes the Commission's legitimate interest in ensuring that the LNG Terminal facilities proposed in this proceeding are operated safely, reliably and consistent with the conditions of the certificate. Accordingly, the FSRU is described in detail in this Application and the attached Exhibits. In the event that the Commission disagrees with the Applicant's jurisdictional analysis, the instant Application contains all of the information

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9 15 U.S.C. § 717a(11)(A)(2006).

10 While EBRV-type vessels have been successfully used for offshore LNG terminals operated pursuant to the U.S. Deepwater Port Act of 1974 ("DWPA"), 33 U.S.C. § 1501, *et seq.*, the Applicant knows of no other LNG project certificated by the Commission under NGA Section 3 that includes (or included) a classed waterborne vessel, such as Excelerate Energy's EBRVs, used as a floating regasification unit.

necessary for the Commission to reach a decision on the merits, irrespective of whether any portion of the FSRU ultimately is deemed to be includible in the jurisdictional LNG Terminal facilities proposed herein.

The Applicant has been diligent in its efforts to communicate information about the Aguirre Project to the local community, including residents, governments and businesses, through public meetings and dialogue, flyers, a Project website and on-site informational presentations. Many of these meetings and activities have taken place as part of the required pre-filing process for this Project,[11] which commenced on January 11, 2012.[12] Over the past fifteen months, the pre-filing process has allowed for extensive participation by PREPA, community interests, the USCG, FERC staff, representatives of various federal and Commonwealth agencies and governmental organizations, and other affected parties.[13] Among other things, the Applicant has extensively consulted with FERC and USCG staff regarding the proposed delineation of jurisdictional and non-jurisdictional Project facilities, and the arrangement set forth herein reflects these consultations and understandings.

NGA Section 3 requires this Application to be approved unless the Commission finds that the proposal "will not be consistent with the public interest."[14] The Applicant has met this standard. The proposed LNG Terminal, as part of the larger Aguirre Project, has been developed in close cooperation with PREPA to meet existing and future demand for natural gas

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11 *See* 18 C.F.R. § 157.21 (2012).

12 *See* Letter order approving pre-filing request and commencing the pre-filing process, Docket No. PF12-4-000 (Jan. 11, 2012). Under 18 C.F.R. § 153.6(c), this Application cannot be filed before 180 days after the date of issuance of the notice by the Director of the Office of Energy Projects of the commencement of the pre-filing process. This condition has been met.

13 In Docket No. PF12-4-000, the Applicant has filed eleven progress reports that summarize the pre-filing activities that have occurred since the inception of the pre-filing process. The Applicant has also filed several iterations of its proposed Resource Reports and responded to certain specific comments and suggestions of the FERC staff. *See* 18 C.F.R. § 157.21(f) (2012) (listing an applicant's required activities during the pre-filing process).

14 15 U.S.C. § 717b(a).

at the Aguirre Power Plant and, for this reason, it represents a critical element of Puerto Rico's fuel diversification and environmental strategies. By making natural gas available to the largest oil-fired generating facility on the island that otherwise has no access to it, the Aguirre Project will directly contribute to the accomplishment of important public policy goals, will facilitate PREPA's compliance with the MATS Rule, and will improve access for the citizens of Puerto Rico to more affordable fuel and environmentally sound electricity. Therefore, approving this Application is in the public interest.

II. APPLICANT

The exact legal name of the Applicant is Aguirre Offshore GasPort, LLC. The Applicant is a wholly-owned subsidiary of Excelerate Energy and a limited liability company formed under the laws of the State of Delaware. Excelerate Energy is an experienced developer and operator of offshore and onshore LNG import/export facilities and a limited partnership formed under the laws of the State of Delaware. In the United States, Excelerate Energy currently owns and operates one deepwater port LNG project, known as the Northeast Gateway Project, which was authorized pursuant to the DWPA.[15] Also, Excelerate Energy recently initiated, through its subsidiaries, a pre-filing process before this Commission for its proposed Lavaca Bay LNG Project, which involves two purpose-built floating liquefaction, storage and offloading units located in Calhoun County, Texas.[16] In addition to its U.S. LNG projects, Excelerate Energy owns and/or operates offshore and onshore LNG facilities in Argentina, Kuwait, Israel and the United Kingdom. Excelerate Energy is jointly owned by Mr. George B. Kaiser and RWE Supply and Trading Participations Limited, a member of the RWE AG group. Mr. Kaiser is an

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[15] *See Northeast Gateway Energy Bridge, LLC*, DOT Deepwater Port License Application, Secretary's Decision, USCG-2005-22219-0463 (Feb. 7, 2007) (decision issuing license).

[16] *See* Approval of Pre-Filing Request, *Excelerate Liquefaction Solutions I, LLC, et al.*, Docket No. PF13-1-000 (Nov. 20, 2012).

American entrepreneur domiciled in Tulsa, Oklahoma, and is the principal owner of the Kaiser-Francis Oil Company, and is the majority shareholder of BOK Financial Corporation, a publicly traded bank holding company.

The Applicant was formed as a special-purpose vehicle to develop, own and/or operate the LNG Terminal proposed in this proceeding and other Project facilities, and to hold the NGA Section 3 certificate and other permits and authorizations issued in connection with the Project. The Applicant is neither owned, in whole or in part, nor subsidized, directly or indirectly, by any foreign government, nor is it contractually committed to ownership or subsidization by any foreign government entity. The Applicant's principal place of business is located at: 1450 Lake Robbins Drive, Suite 200, The Woodlands, Texas 77380. A detailed explanation of the Applicant's corporate arrangements and ownership structure is set forth in Exhibits A and B hereto.

The persons to whom correspondence in regard to this Application shall be addressed are as follows:

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III. DESCRIPTION OF THE PROJECT AND PROPOSED JURISDICTIONAL AND OPERATIONAL ARRANGEMENTS

A. Project Facilities

The Project will include both FERC-jurisdictional and non-jurisdictional facilities. The jurisdictional facilities will consist of the proposed LNG Terminal, which will include the following main components: (1) an offshore berthing platform; and (2) a 4.1 mile-long subsea interconnecting natural gas pipeline connecting the Project's offshore facilities to the Aguirre Power Plant. The non-jurisdictional facilities will include: (1) one of Excelerate's EBRVs functioning as the FSRU for the Project, which will be subject to extensive oversight by the USCG; and (2) certain minor onshore natural gas interconnection and receiving facilities, which will be owned by PREPA and will be subject to the oversight of Puerto Rico governmental authorities. The Applicant proposes the Emergency Shutdown Valve on the downstream side of the onshore pig receiver as the demarcation point between the jurisdictional LNG Terminal and PREPA's non-jurisdictional interconnection facilities. Section III.B of the Application, *infra*, provides a detailed jurisdictional analysis supporting the proposed delineation between jurisdictional and non-jurisdictional Project facilities.

1. Jurisdictional LNG Terminal Facilities

a. Offshore berthing platform

The offshore berthing platform will be installed in Commonwealth waters, 1 mile outside the confines of Jobos Bay, and approximately 3 miles offshore from the Aguirre Power Plant (as measured in a straight line from the offshore berthing platform to the Aguirre Power Plant). The offshore berthing platform will be designed for the long-term mooring of an FSRU and the receipt of LNG carriers ranging in size from 125,000 cubic meters ("m^3") of storage up to a Q-

Flex[17] size (217,000 m^3) LNG carrier. The offshore berthing platform will be a fixed platform carrying all the topside facilities and two berths, one on each side of the platform, employing an "across the dock" configuration. One of Excelerate Energy's existing EBRVs will be moored at a berth on the north (landward) side of the platform to serve as the FSRU. LNG carriers will temporarily dock on the south (seaward) side of the platform while unloading LNG cargo. LNG cargo will be transferred from the LNG carrier to the FSRU using conventional LNG loading arms and cryogenic piping located on the platform's topside.

Specific components of the offshore berthing platform include:

- Two LNG vessel berths;
- Berthing fenders and mooring and breasting dolphins for each berth;
- LNG loading arms at each berth, and LNG drain tanks and LNG piping between the LNG loading arms at each berth to facilitate transfer of LNG between vessels;
- High-pressure gas loading arms at one berth to connect to the FSRU and facilitate natural gas discharge to the send-out pipeline;
- Utility platforms housing docking facilities for life boat and service vessels, control and switch gear rooms, utility equipment, personnel access/egress and laydown and work areas; and
- Utility systems, including gas and diesel-fueled electricity generators, nitrogen generators, electric seawater pumps, diesel fire pumps, diesel storage tanks, lubrication oil storage tanks, potable water and waste water tanks, sewage treatment unit and fire water monitors; and process support systems, electrical systems, lifting and handling equipment, and safety systems.

Construction of the offshore berthing platform will require 74 acres of sea floor, while permanent operation will require only 22 acres. The Applicant anticipates utilizing a pre-fabricated modular design for the construction of the offshore berthing platform. The modular design will employ pre-cast concrete elements fabricated under plant (factory-controlled)

[17] A Q-Flex sized vessel is an industry accepted reference to any LNG carrier with a cargo capacity ranging from 210,000 to 217,000 m^3.

conditions rather than on-site fabrication. Use of pre-cast elements reduces the need for complex, on-site formwork operations over water, resulting in a shortened construction schedule and smaller crews and associated marine support.

b. Subsea interconnecting natural gas pipeline

The Project also includes the construction of a 4.1 mile, 18-inch outside diameter, steel natural gas pipeline, which will connect the offshore berthing platform with the Aguirre Power Plant and will be included in the proposed LNG Terminal. The pipeline will have a 3-inch thick concrete coating for additional protection, resulting in a total outside diameter of 24 inches. The pipeline's maximum allowable operating pressure will be 100 bar, with a design pressure of 135 bar.

The proposed pipeline route extends approximately 4.1 miles, starting at the offshore berthing platform (mile post 0.0), through the Boca del Inferno inlet (mile post 1.0 to ~1.8), across the Jobos Bay basin (mile post 1.8 to 4.0) and terminating at the Aguirre Plant property where it will interconnect with the Aguirre Plant's piping.[18] Construction of the pipeline will require 81 acres of sea floor, while permanent operation will require only 10 acres. A "push pipe lay" technique will be utilized, resulting in the pipeline being laid directly on the seafloor, unburied or only partially buried by natural bottom sediments depending on the sediment type. This installation method minimizes the area of seafloor impact, sediment disturbance and water quality impact. The pipeline will be concrete-coated for protection, to provide negative buoyancy, stability and safety. It will be gauged to verify its geometric integrity and then

[18] The pipeline route was selected according to the following criteria: avoiding mangrove barrier islands; minimizing proximity to known sensitive bottom habitats; minimizing bends, or points of inflection, to facilitate offshore installation methods with the least bottom impacts; avoiding crossing the existing barge channel in Jobos Bay; avoiding crossing the existing Aguirre Power Plant cooling water outfall pipe; making direct landfall within the Aguirre Power Plant to avoid private properties; and achieving the shortest reasonable route.

hydrostatically tested upon completion of the installation but prior to the final connections to the offshore berthing platform and the Aguirre Power Plant.

2. Non-Jurisdictional Project Facilities

a. FSRU

Excelerate Energy will utilize one of its existing EBRVs as the FSRU for the Project. When serving as the FSRU, the EBRV will be moored to the north side of the offshore berthing platform. The FSRU will be subject to and comply with USCG Subchapter O Endorsement and Port State Inspections for a foreign flag vessel operating in U.S. waters[19] and certain other USCG regulations, as discussed in more detail in Section III.B.1 below.

EBRVs are purpose-built LNG tankers capable of ocean travel. They utilize a steam generating plant in the vessel for propulsion and overall vessel operations and incorporate onboard equipment for the vaporization of LNG and delivery of high-pressure natural gas. The EBRVs were developed jointly by Excelerate Energy, Exmar NV and Daewoo Shipbuilding & Marine Engineering Co., Ltd. Excelerate Energy currently has a fleet of eight EBRVs, all classified under survey of the Bureau Veritas classification society, with a ninth under construction.

The LNG storage system in an EBRV consists of four double-insulated cargo tanks encased within the inner hull and situated in-line from forward to aft. The spaces between the inner hull and outer hull are used for the ballast and also will protect the tanks in the event of an emergency situation such as a collision. All EBRVs utilize a Membrane Cargo Containment System made up of reinforced tanks with a membrane of high nickel alloy stainless steel and an insulation system that provides greater resistance to liquid sloshing during adverse sea

[19] *See* 46 C.F.R. Part 154.

conditions. The tanks are fitted with a number of tank-level gauges, vapor sensors and valves, temperature sensors, and leak detection instrumentation.

The FSRU for the Project will have a storage capacity of up to 150,900 m^3 of LNG, an overall length of 291 meters, and a design draft of 11.6 meters. It will utilize a closed-loop vaporization mode for the regasification process, whereby steam from the FSRU steam boilers is used to heat freshwater circulated through the shell-and-tube vaporizers to regasify the LNG. There is no seawater intake or discharge used specifically for the regasification process in the closed-loop mode. Seawater, however, will be used for engine cooling, fire water and deckwashing purposes.

The FSRU's regasification system will comprise a suction drum, high-pressure pumps, high-pressure vaporizers, metering system, and low- and high-pressure pipework and valves. LNG will be stored in the cargo tanks at a pressure slightly above atmospheric and will be pumped by low-pressure feed pumps to the suction drum. From the suction drum, the liquid pressure to the vaporizers is increased by the high-pressure pumps. Small high-pressure pumps are used for pressurization of the system during start-up and gradually increase the system pressure without excessive generation of boil-off gas. A single high-pressure pump is utilized to increase the LNG flow rate to the minimum operating flow rate of 50 MMscf/d. The flow rate can then be increased up to 100 MMscf/d with a single pump. There are six additional 100 MMscf/d capacity high-pressure pumps on the FSRU. Five pumps are utilized to deliver gas at a sustained rate of up to 500 MMscf/d. Therefore, there will be sufficient spare capacity on the FSRU to satisfy peak demand, ensuring sufficient availability and reliability of the natural gas supply.

The FSRU will incorporate six LNG vaporizers that utilize a shell-and-tube heat exchanger where the LNG is vaporized to natural gas and heated to approximately 4°C minimum by the vessel's internal heating system in closed-loop mode. The normal natural gas flow rate through a single vaporizer is between 50 and 100 MMscf/d, with a maximum flow rate of 119 MMscf/d and a combined maximum of 714 MMscf/d. The temperature and pressure are measured at each vaporizer outlet line in order to calculate the re-gas flow rate using the recorded actual pressure drop at the flow measuring orifice. On leaving the LNG vaporizer, natural gas flows through a metering station, then through a pressure regulating station that maintains a minimum pressure of approximately 75 barg in the regasification system, and then into the export pipeline. The natural gas then passes through the delivery flange on the high-pressure manifold and into the high-pressure natural gas loading arm on the offshore berthing platform.

The FSRU will be moored to the north side of the offshore berthing platform to perform regasification operations. Periodic maintenance of the FSRU must be performed, however, in order to keep vessel class certificates and ensure commercial reliability. Periodic maintenance outages will be scheduled for preventative maintenance and repairs on the main boilers, auxiliaries and associated regasification system. Additionally, scheduled dry-docking shall be performed as per class requirements, which is typically done once every five years. A normal dry-dock period is approximately 21 days, excluding transit time to and from the respective dry-dock port. Excelerate Energy will use reasonable efforts to provide a similar FSRU during dry dock periods to act as an FSRU in the supply of natural gas.

b. Onshore natural gas interconnection and receiving facilities

Because of the offshore nature of the Project, the only onshore facilities of significance will be the terminus of the subsea interconnecting natural gas pipeline and its connection into the

piping of the Aguirre Power Plant. These facilities will be constructed and owned by PREPA and will include a metering station, pressure reduction equipment, process gas heat exchangers, and interconnecting pipework.

B. Jurisdictional Analysis

1. Non-Jurisdictional Status of the FSRU

This Application poses an issue of first impression – *i.e.*, whether the FSRU is exempt from the Commission's NGA Section 3 jurisdiction. Under the Energy Policy Act of 2005 ("EPAct") amendments to the NGA, Section 3 was revised to provide, *inter alia*, that "the Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an *LNG terminal*."[20] The EPAct also defined the term "LNG terminal," as used in Section 3, by adding a new subsection 11 to the definitional provisions set forth in NGA Section 2. The resulting Section 2(11) states as follows:

> "LNG terminal" includes all natural gas facilities located onshore or in State waters[21] that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—
> (A) *waterborne vessels used to deliver natural gas to or from any such facility*; or
> (B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 [15 U.S.C. §717f].[22]

The Applicant submits that, in this case, the FSRU is exempt from the Commission's jurisdiction under the "waterborne vessel" exception set forth in NGA Section 2(11)(A), *supra*. Although neither the Commission nor the courts have had a chance to interpret the "waterborne vessel" exception, presumably due to its relatively recent inclusion in the NGA, long-standing

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20 15 U.S.C. § 717b(e) (emphasis added).

21 Puerto Rico is a "State" under the NGA. *See* 15 U.S.C. § 717a(4). Puerto Rico's waters extend seaward three marine leagues (or nine nautical miles) from the coastline. *See* 48 U.S.C. § 749.

22 15 U.S.C. § 717a(11) (emphasis added). The same definition is adopted in the Commission's regulations. *See* 18 C.F.R. § 153.2(d) (2012).

principles of statutory interpretation should guide the Commission's analysis in this case. As the Supreme Court explained in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) ("*Chevron*"):

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. . . [I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[23]

Congress has "directly spoken to the precise question at issue," finding it fit to specifically exclude "waterborne vessels used to deliver natural gas to or from any such facility" from the Commission's jurisdiction under NGA Section 3. No such exemption existed prior to the 2005 EPAct amendments, which illustrates Congress' specific intent to address the issue.[24] Under *Chevron*, the Commission should give effect to this express and specific intent because the language at issue is free of ambiguity.

There is no question that Excelerate Energy's EBRVs, including when serving as the FSRU for the Project, are, in fact, "waterborne vessels." As discussed herein, the EBRVs are actual marine ships subject to the USCG's classification and extensive supervision and regulation. At no point during their useful lives do these marine vessels lose their seaworthiness or their ability to sail. Further, an EBRV serving as the FSRU will not be permanently attached to the proposed LNG Terminal and may be replaced by other EBRVs during periods of maintenance and for other purposes. In addition to these maintenance requirements, the EBRV

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[23] *Chevron*, 467 U.S. at 842-43.

[24] *See, e .g., Holly Sugar Corp. Johanns*, 437 F.3d 1210, 1214 (D.C. Cir 2006) ("[T]he statute sets no interest rate for sugar. Instead, it sets an interest rate for all other commodities and specifically exempts sugar. By removing sugar from the statutory rate, 'Congress has directly spoken to the precise question' . . .").

can and will utilize its ability to relocate to avoid dangerous weather conditions, thereby helping to ensure the safety of the crew while minimizing the risk of storm-related damage and recovery time. Also, PREPA will maintain, under its agreements with Excelerate Energy, the flexibility, at its option, to use the FSRU as a conventional LNG carrier, shuttling to LNG terminals to load LNG cargos. These factors all demonstrate that the EBRVs are genuine "waterborne vessels" and have little in common with immobile floating platforms that the Commission previously approved as jurisdictional Section 3 facilities.[25] Finally, any EBRV used as the FSRU will be "used to deliver natural gas to . . . any such facility" *(i.e.*, to the proposed LNG Terminal), thereby meeting the EPAct exception. LNG delivery is effectuated through a supply chain, and an EBRV used in this chain to bring the gas to the LNG Terminal is a waterborne vessel that is "used to deliver natural gas to . . . any such facility."

Nonetheless, should the Commission conclude that the language of the "waterborne vessel" exception is ambiguous, the division between jurisdictional and non-jurisdictional facilities proposed in this Application is a permissible and reasonable construction for the Commission to adopt, and it will be accorded deference under *Chevron*. First, to the Applicant's knowledge, the Commission has not in the past regulated vessels and has not developed the resources needed to effectuate such regulation.[26] Also, the Commission's assumption of this new regulatory function in the instant case would be duplicative of the USCG's oversight of the Applicant because the FSRU will be subject to the USCG's extensive regulations and authority

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[25] *See, e.g., Broadwater Energy LLC*, 122 FERC ¶ 61,255, *reh'g denied*, 124 FERC ¶ 61,225 (2004).

[26] For example, under NGA Section 7, the Commission long ago disclaimed its interstate transportation jurisdiction over non-pipeline means of transportation of natural gas, including barges, and has adhered to this policy ever since. *See Exemption of Certain Transport and/or Sales of Liquefied Natural Gas from the Requirements of Section 7(c) of the NGA*, 49 FPC 1078, at 1079 (1973) ; *see also Southern LNG Inc.*, 131 FERC ¶ 61,155, at P 17 (2010) ("As a general rule, our jurisdiction over the transportation of natural gas in either gaseous or liquefied state in interstate commerce is limited to transportation by pipeline, *i.e.*, our jurisdiction does not extend to deliveries of natural gas by truck, train, or barge.").

throughout the duration of the Project.[27] Among other things, the applicable USCG regulations comprehensively address the design, safety and operations of such vessels (including their onboard LNG equipment), pollution control and LNG transfer operations.[28] Consequently, no regulatory gap would arise with respect to the Aguirre Project due to this comprehensive USCG regulation.

In contrast, asserting NGA Section 3 jurisdiction in this case could cause an unnecessary and counterproductive overlap in the regulatory functions of the FERC and the USCG, potentially resulting in administrative inefficiencies and conflicting rulings. In a recent decision that interpreted a similar clause in NGA Section 2(11) in an island context,[29] the Commission declined to assert jurisdiction over certain facilities located in Hawaii and various associated LNG activities that notionally might have come within the definition of the "LNG Terminal," as set forth in NGA Section 2(11). Among the reasons in support of its decision, the Commission pointed out that "uniform federal environmental and safety standards are already in effect and would apply to the proposed project."[30] The Commission specifically noted that "ships bringing LNG or any other cargo to Hawaii would be subject to regulation by the Coast Guard" and concluded that "there is no call for the Commission to fill any regulatory gap, since the facilities and operations would be subject to safety and environmental provisions of other federal entities,

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27 In general, these regulations are set forth at 46 C.F.R. Part 154 (Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases) and 33 C.F.R. Parts 127 (Waterfront Facilities Handling Natural Gas), 155 (Oil or Hazardous Material Pollution Prevention Regulations for Vessels) and 156 (Oil and Hazardous Material Transfer Operations).

28 *Id.*

29 *The Gas Co., LLC*, 142 FERC ¶ 61,036 (2013) ("*Gas Company*"). The *Gas Company* decision addressed the language in NGA Section 2(11) that included in the definition of the "LNG Terminal" natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy or process natural gas that is, among other things, "transported in interstate commerce by waterborne vessel."

30 *Gas Company,* 142 FERC ¶ 61,036, at P 17.

principally the Department of Transportation and the Coast Guard."[31] The same rationale applies in this case; the totality of the Applicant's operations and facilities (including those that are not FERC-jurisdictional) will be subject to extensive federal and local oversight, including by the USCG.

Second, the Commission's ability to regulate the Aguirre Project will not be diminished by the FSRU's non-jurisdictional status. The Commission will have, at all times, extensive NGA Section 3 authority over the proposed LNG Terminal, thereby ensuring that it has sufficient oversight of the entire Project. Critically, no delivery of natural gas to the Aguirre Power Plant can be effectuated from the Project without using the certificated LNG Terminal facilities, and no EBRV would be able to function as the FSRU without utilizing these facilities. By directing its orders to the jurisdictional components of the Aguirre Project, the Commission will be able to promptly address any issue that falls within its authority. Additionally, NGA Section 3 provides the authority for the Commission to issue supplemental orders, "as necessary or appropriate,"[32] which affords extra flexibility to the Commission in its oversight of the proposed LNG Terminal.

Finally, the proposed exclusion of the FSRU from the certificated LNG Terminal facilities makes practical sense in this case. Certificating any portion of the FSRU as part of a jurisdictional "LNG terminal" could impede the Applicant's ability to promptly use replacement EBRVs, including during maintenance, outage and dry docking, or in other similar circumstances, particularly if the Applicant is required to file a certificate amendment application each time such a replacement EBRV is used.[33] Such a certification requirement could lead to delays and potential disruptions in supplying natural gas to the Aguirre Power Plant. In contrast,

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31 *Id.*

32 *See* 15 U.S.C. § 717b(a); 18 C.F.R. § 153.11 (2012).

33 The Commission's certificate amendment regulations appear to require an application in such instances. *See* 18 C.F.R. §§ 153.4 to 153.13 (2012).

excluding the FSRU from the certificated LNG Terminal would avoid such delays and disruptions without diminishing the overall regulatory oversight of the Project.

2. Inclusion of the Connecting Pipeline in the Proposed LNG Terminal

In addition to the berthing platform, the proposed LNG Terminal facilities will include the connecting subsea pipeline. Under Section 2(11) of the NGA and the Commission's regulations, the term "LNG Terminal" is defined to include, *inter alia*, "all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, *transport*, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country."[34] While the term "LNG terminal" excludes pipeline facilities that are subject to the Commission's jurisdiction under Section 7 of the NGA,[35] the Commission previously included off-take pipeline facilities as part of the LNG terminal certificated under NGA Section 3 where, as here, such facilities otherwise would be non-jurisdictional.[36] In this case, the proposed subsea pipeline will be a sole-use facility to deliver natural gas for ultimate consumption at the Aguirre Power Plant and, for that reason, is exempt from the Commission's jurisdiction under Section 1(b) of the NGA.[37] Further, all of the components of the proposed LNG Terminal will be owned and/or operated by the Applicant, and no public interest would be served by excluding the pipeline component from the certificated LNG Terminal, particularly in light of the fact that its sole purpose will be to deliver the regasified LNG to the Aguirre Power Plant to generate electricity.

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34 15 U.S.C. § 717a(11); 18 C.F.R. § 153.2(d)(2012) (emphasis added).

35 *See* 15 U.S.C. § 717a(11)(B).

36 *See, e.g., Freeport LNG Development*, 107 FERC ¶ 61,278 (2004); *Sound Shore Energy Solutions*, 106 FERC ¶ 61,270, at 62,014 n.1 (2004).

37 *See* 15 U.S.C. § 717(b) ("The provisions of the [NGA] shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution* or to the production or gathering of natural gas.") (emphasis added).

C. Proposed Ownership and Operational Arrangements

Excelerate, PREPA and certain other entities plan to negotiate and enter into a suite of contractual arrangements with respect to the financing, management, operation and ownership of the Project. While these agreements are not subject to the Commission's approval, they are explained below to ensure that the Commission has the full understanding of the Aguirre Project's underlying commercial and operating arrangements. Further, the contractual arrangements between the parties have not yet been finalized and are subject to change, but the Applicant will own and operate the LNG Terminal under any final contractual structure.

Under the proposed arrangement, the Applicant will be the owner of the LNG Terminal and will enter into a lease agreement with Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority ("AFICA," by its Spanish acronym), a public corporation affiliated with the Government Development Bank for Puerto Rico, or another eligible governmental instrumentality (collectively with AFICA, the "Financing Entity"), whereby the Applicant will lease the LNG Terminal to the Financing Entity for a term at least as long as 120% of the maximum useful life of the LNG Terminal (*i.e.*, 35 years or longer). The Financing Entity will grant rights to use the LNG Terminal to PREPA pursuant to a 15-year usage agreement. PREPA, in turn, will contract for the Applicant to provide operation and maintenance services for the LNG Terminal pursuant to the terms of an operation and maintenance agreement, which also will be coextensive with the term of the usage agreement (*i.e.*, 15 years). In addition, PREPA will enter into a Time Charter Party for use of the FSRU with an affiliate of the Applicant (Excelerate Energy Puerto Rico, LLC, a Delaware limited liability company wholly-owned by Excelerate Energy), also for a term of 15 years. A diagram of the proposed financing arrangements is attached hereto as Exhibit B-1.

The essential purpose of the proposed contractual structure is to ensure that financing for the Project is obtained at the most advantageous cost of funds. Under this contractual structure, the Applicant will be the legal owner and the operator of the LNG Terminal and the certificate holder for the Project at least during the term of the 15-year operation and maintenance agreement, while the Financing Entity will raise the necessary capital pursuant to a tax-exempt bond issue, and PREPA will have all legal rights necessary for use of the LNG Terminal. PREPA's usage fee payments to the Financing Entity under the usage agreement will be applied to pay debt service on the bonds.

It is expected that the lease between the Financing Entity and the Applicant will require the Financing Entity to purchase for nominal consideration the LNG Terminal from the Applicant at the expiration of the 15-year operation and maintenance agreement term.[38] Such purchase will be expressly subject to, and conditioned upon, approval by the Commission and the Financing Entity or PREPA, as applicable, obtaining all necessary approvals. The Financing Entity, PREPA and the Applicant will also discuss the possibility of effecting the transfer of the LNG Terminal ownership via a transfer of equity ownership of the Applicant rather than through a purchase transaction, upon notice to the Commission.

IV. SAFETY, SECURITY AND ENVIRONMENT

A. Safety and Security

1. Safety

The Applicant understands the hazards that are inherent in LNG operations and thus takes its safety responsibilities very seriously. As required by the Commission's regulations, this Application includes a detailed review of the Aguirre Project's safety systems and equipment,

[38] The purchase provision has not been finalized as of the date of the Application and is subject to further negotiation.

describing how the Project facilities will be designed, constructed, operated and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes.[39]

Generally, the Project will be designed, constructed, operated and maintained by appropriately trained and licensed employees and contracted entities, in accordance with applicable statutes and regulations, regulatory permit conditions and authorizations, engineering design specifications, recommended manufacturer maintenance practices and Project operating policies and procedures. The Applicant will maintain procedures for the operation and maintenance of the Project facilities, including the proposed LNG Terminal, which are designed to assure the effective conduct of operations as well as the reliability and availability of the Project facilities. The following brief overview of the key safety systems present on the LNG Terminal and the FSRU is not intended to be comprehensive, as these systems are described in detail in the Resource Reports filed as Exhibit F.

a. Safety systems for the offshore berthing platform and the FSRU

A fire and gas detection system will be provided that will alert personnel to a fire or gas incident and to minimize the risk to personnel and facilities by early detection. This will be achieved by the automatic detection of fire and gas conditions, which will result in the automatic triggering of alarms, thereby warning operator and site personnel of emergency conditions and enabling the site emergency contingency plans to be put into operation. The Project will also include an electronic emergency shutdown ("ESD") system with sufficient redundancy to ensure system reliability in the event of a safety related upset. This system will be connected to the

[39] *See* Ex. F, Resource Report 11, "Reliability and Safety," and Resource Report 13 "Engineering and Design Material." Certain portions of these documents are subject to the Commission's Critical Energy Infrastructure Information ("CEII") and privileged information protections. *See* 18 C.F.R. §§ 388.112 and 388.113 (2012); *Filing of Privileged Materials and Answers to Motions*, Order No. 769, 141 FERC ¶ 61,049 (2012).

FSRU ESD system ship to shore communication link. Finally, fire protection for the Project will be evaluated based on sound fire protection engineering principles, analysis of local conditions, hazards, and exposure to or from other property in accordance with the National Fire Protection Association ("NFPA") 59A "Standard for the Production, Storage, and Handling of Liquefied Natural Gas."

b. Pipeline safety

The subsea pipeline will be designed, constructed, operated and maintained in accordance with the Department of Transportation ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") "Minimum Federal Safety Standards."[40] These regulations are intended to ensure adequate protection for the public from natural gas pipeline failures and specify material selection and qualification, minimum design and construction requirements, and protection from internal, external and atmospheric corrosion.

c. Spill containment

The design of the LNG storage tanks is such that two separate barriers provide for containment of the LNG within each cargo tank. Should the primary (inner) barrier be compromised and leak, a secondary barrier is positioned to contain the LNG. The insulation spaces between the two barriers and the hull are filled and lightly pressurized (below tank pressure) with nitrogen. These spaces are continually monitored by gas detection equipment as a measure to immediately detect any leak initiating in the tank. In addition to gas detection, temperature detectors inside the secondary barrier and along the inner hull structure surrounding the tank can provide an indication of a suspected leak location. To prevent the overfilling of the LNG storage tanks, the tanks are equipped with multiple and redundant level gauging systems.

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[40] *See* 49 C.F.R. Part 192.

The tank's fill valve is set to automatically close when the LNG level reaches a very full state (98.5% full), and an extremely high level (99% full) will trigger the emergency shutdown system. During the LNG unloading process, any LNG drips that occur during transfer operations will be washed overboard by the deckwash systems.

d. Fire water system

Fire protection for the offshore berthing platform is based on sound fire protection engineering principles, analysis of local conditions, hazards and exposure to or from other property in accordance with NFPA 59A, which provides the standard for the production, storage and handling of LNG. The FSRU has been designed and constructed in accordance with Bureau Veritas classification society requirements and International Gas Carrier Code. The FSRU also is fully equipped for fire detection and firefighting as required by the International Convention for the Safety of Life at Sea 1974, with later amendments.

The offshore berthing platform fire water system will consist of the following main components: 1) utility and main pumps; 2) wet ring main; 3) oscillating monitors; 4) water spray curtains; 5) hydrants; and 6) International Maritime Organization shore-to-ship connection. The FSRU fire water system will consist of the following main components: 1) bilge, fire and general service pumps; 2) jockey pump; 3) emergency fire pump; 4) wet ring main; and 5) hydrants. Additionally, the FSRU will contain a fixed total flooding high-expansion foam system to extinguish any fire in the engine room. The system will consist of a foam pump, a foam storage tank, foam generators, control valves, foam/water discharge pipes and control devices.

e. Emergency shutdown system

The offshore berthing platform and the FSRU will incorporate an extensive manually and/or automatically activated emergency shutdown system and an automatically activated automatic shutdown system, with both systems working together to deactivate the LNG

regasification process and the transfer of natural gas. The primary difference between the two systems is that the emergency shutdown system is intended to work to quickly stop cargo transfer during an emergency condition and cause the primary isolation or emergency shutdown valves to automatically close, terminating the transfer of cargo. The automatic shutdown system is designed to prevent mechanical damage to equipment, thus reducing the risk of a hazardous condition.

The emergency shutdown system can be initiated manually by operating personnel from several emergency shutdown stations around the FSRU. In addition to the manual trigger, the emergency shutdown system will be automatically activated when any automated permissive control sensors indicate a non-standard situation, including, but not limited to, detection of hydrocarbon gas vapor at 60 percent of the lower explosive limit or detection of fire. Detection equipment aboard the FSRU includes state-of-the-art gas, fire and smoke detection systems that continually monitor the FSRU's atmosphere.

2. Security

The Project will undergo a Facility Security Assessment, which will be used to develop a Port Facility Security Plan in accordance with the International Ship and Port Security Code. The analysis for the Aguirre Offshore GasPort Waterway Suitability Assessment will provide a starting basis for the Facility Security Assessment and the Port Facility Security Plan and will include safety and security issues for both in-transit and moored LNG vessel operations leading to the potential of an accidental or intentional release of LNG.

The need for and size of safety and security zones around the offshore berthing platform and FSRU will be determined during the USCG's review of the Project. It is likely that the USCG will establish safety and security zones around the FSRU, as well as LNG carriers while they are in the Project area. In addition, a general cautionary designation on navigation charts is

expected in order to provide notice to mariners of the presence of the offshore facilities. Also, it is expected that regulations under the International Maritime Organization will establish a designated Safety Zone, an Area To Be Avoided, and a Watch Zone.

B. Environment

Pursuant to the requirements of 18 C.F.R. § 157.21, the National Environmental Policy Act ("NEPA") pre-filing process was requested for the proposed Project on December 21, 2011. On January 11, 2012, the Commission approved the request. On February 28, 2012, the Commission issued a notice, pursuant to 18 C.F.R. § 157.21(e)(1), indicating its intent to prepare an environmental impact statement ("EIS") for the Project.[41]

As part of the pre-filing process, the Applicant submitted and supplemented, in accordance with Part 380 of the Commission's regulations,[42] draft Resource Reports 1-11 and 13 and also responded to FERC staff comments and requests for information. The version of the Resource Reports included in this Application as Exhibit F (Environmental Report) reflects these comments and revisions. As explained in the Resource Reports, the Applicant, based on the results of the studies presented and described therein, does not anticipate that the construction and operation of the proposed facilities will result in any significant adverse impacts to the environment that would outweigh the public benefits that would be realized upon the approval, construction and operation of this Project.

The environmental impacts of the Project are addressed primarily in Resource Reports 2 through 10. Resource Report 2 identifies and describes the surface water and groundwater resources present within the Project area and the potential impacts associated with the construction, operation and maintenance of the Project on the identified surface water and

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41 *See Excelerate Energy L.P.*, 77 Fed. Reg. 13,117 (Mar. 5, 2012).
42 18 C.F.R. § 380.1, *et seq.*

groundwater resources. The most significant water use during the Project construction period will involve the hydrostatic testing of the subsea natural gas pipeline. Once the Project is in service and during normal operations, the FSRU will use up to approximately 56 million gallons per day of water to support the vessel's main cooling system, ballast water requirements, a safety water curtain during regasification and saltwater desalination for hoteling and sanitary purposes. Seawater may also be used for the water deluge and fire water systems. Resource Report 2 demonstrates that the environmental consequences and impacts associated with the construction and operation of the Project facilities will be minimal.

Resource Report 3 describes existing fish, wildlife and vegetation resources that may be directly and indirectly affected by the Project. The report covers expected temporary and permanent impacts on these resources, including potential effects on biodiversity, from construction and operation of the facilities as well as the avoidance and mitigation measures. Construction and operation of the Project have the potential to result in negative impacts on the marine and estuarine environment. Direct impacts during construction are expected to occur along the pipeline route and within the offshore berthing platform area and may include scraping and scouring of the seafloor. During the operation of the offshore facilities, the overall impact from increased vessel traffic will be negligible given the existing vessel traffic in the vicinity. Impacts will be minimized by siting the offshore facilities in a deepwater environment, and by selecting the pipeline route to avoid mangrove habitat and bird rookeries.

Resource Report 4 describes the cultural resources surveys for the Project and also describes the proposed unanticipated discovery plan, which outlines the plan and procedures that will be followed in the event that potentially significant cultural resources or human remains are discovered during the construction or operation of the Project. The report provides the status of

the Native American consultation and consultation with the Puerto Rico State Historic Preservation Office. The report finds that there is a low probability that the onshore portion of the Project will impact any cultural resources, as the land at that location has already been disturbed by the construction of the Aguirre Power Plant.

Resource Report 5 examines the existing socioeconomic conditions in the Project area, provides an assessment of the potential impacts resulting from construction and operation of the Project and describes methods to mitigate any potential impacts. The report demonstrates that the Project will not displace any businesses and will not impact the Aguirre Power Plant's current employment levels, although some positions directly associated with fuel oil deliveries could be rendered unnecessary. Construction for the Project will require a workforce with specialized skills, and it is possible that some new jobs may be filled by qualified persons available from the local workforce.

Resource Reports 6 and 7 describe the geology and soils of the Project area. Seismic activity around Puerto Rico is well documented and widely studied and will be accounted for in the Project's design. The information used to generate Resource Reports 6 and 7 was sourced from four Project-specific reports, which include the Desktop Geotechnical Study Report, Nearshore Geotechnical Investigation Report, Geohazard Study and Final Geophysical Survey Report.

Resource Report 8 examines the land use, marine use, recreational resources and aesthetic resources near the onshore and offshore Project facilities in Aguirre, Jobos Bay and the Caribbean Sea. As noted, impacts to existing onshore land will be minimal because the Project's onshore facilities will consist of the subsea pipeline terminus and connection into the existing piping of the Aguirre Power Plant, which is located on the plant's existing industrial land.

Offshore, the Project area is used for several activities, including small-scale commercial fishing, shipping, ecotourism and recreation, and, notably, Jobos Bay is designated by the National Oceanic and Atmospheric Administration as a National Estuarine Research Reserve. While there will be some impact from the Project's construction on these activities, the Applicant will work with the affected entities to minimize disruptions. Because the subsea pipeline will be installed in segments, boat access through the Project area will not be interrupted. Once the Project goes into operation, all impacts are expected to cease.

Resource Report 9 describes the air and noise quality in and around the Project area and discusses the modeling techniques employed. The report analyzes the expected air and noise emissions caused by the construction and operation of the Project.

Resource Report 10 examines potential alternatives to the Project and compares the environmental impacts of such alternatives to those of the Project. Alternatives examined include: 1) no action; 2) construction of overland natural gas pipelines; 3) new land-based LNG terminal; and 4) other offshore terminal configurations. Each of these putative alternatives was rejected for a number of reasons, including failure to achieve PREPA's goals of obtaining a reliable and sufficient supply of natural gas, significant environmental impacts, and the ability of large LNG carriers to travel through and maneuver in Jobos Bay.

V. CONSISTENCY WITH THE PUBLIC INTEREST AND REQUIRED STATEMENTS

The Commission will approve an application pursuant to Section 3 of the NGA[43] and Section 153.7 of the Commission's regulations[44] when the proposed project facilities are not inconsistent with the public interest. The Commission has applied the rationale embodied in its

[43] 15 U.S.C. § 717b(a) (2006).
[44] 18 C.F.R. § 153.7 (2012).

Certificate Policy Statement[45] to the construction of LNG terminals under Section 3 of the NGA.[46] The Certificate Policy Statement requires an applicant to show that a new project will not rely on subsidization from existing customers and that any adverse effects the project may have on existing customers, landowners and surrounding communities have been appropriately minimized or eliminated. In deciding whether to authorize a project under the Certificate Policy Statement, the Commission balances the public benefits of the project against its potential adverse consequences. Significantly, the public benefits may include such factors as "the environmental advantages of gas over other fuels, lower fuel costs [or] access to new supply sources . . . ."[47] Applying these factors in NGA Section 3 cases, the Commission has found, *inter alia*, that the "opportunity to import and store LNG will introduce new sources of supply, increase the available gas volumes, enhance competition, promote price stabilization, and contribute to fulfilling current and future market demands"[48] and that these public benefits are the benchmark against which a proposed project will be measured.[49] As explained below, the Aguirre Project meets these requirements and the proposed LNG Terminal facilities are consistent with the public interest.

A. The Applicant's Proposal Is in the Public Interest (18 C.F.R. § 153.7(c)(1))

The proposed LNG Terminal is in the public interest and should be approved by the Commission because the Aguirre Project will introduce new sources of supply, lower fuel costs,

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45 *Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227 (1999) ("Certificate Policy Statement").

46 *See, e.g., AES Sparrows Point LNG, LLC*, 126 FERC ¶ 61,019, at P 26 n.21 (2009); *Bradwood Landing, LLC*, 124 FERC ¶ 61,257, at P 18 (2008).

47 *Certificate Policy Statement*, 88 FERC at 61,744; *see also id.* at 61,748 ("The types of public benefits that might be shown are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.").

48 *AES Sparrows Point*, 126 FERC ¶ 61,019, at P 26.

49 *Id.*

facilitate environmental compliance by PREPA, enhance competition, promote price stabilization, and contribute to fulfilling current and future market demand for natural gas in Puerto Rico. Importantly, the Project is critical to achieving compliance with the MATS Rule and it will improve access by Puerto Rico's residents to lower costs for fuel acquisition and more environmentally desirable electricity.

First, the Project is being developed at the specific request of PREPA for the purpose of providing a long-term supply of natural gas to the Aguirre Power Plant. The Project will allow PREPA to complete its conversion of the Aguirre Power Plant from a fuel-oil only to a dual-fuel generation facility capable of burning diesel or natural gas for the combined cycle and fuel oil and natural gas for the thermoelectric plant. In the absence of the Project, the Aguirre Power Plant will have no alternative source for the direct delivery of natural gas.[50] A diversified fuel supply at the Aguirre Power Plant will also contribute toward price stabilization, which is not enjoyed under the current fuel supply scenario, and presents an environmentally acceptable alternative to oil in meeting the projected demand.[51]

Second, the Aguirre Project is an essential component of PREPA's fuel diversification strategy. The 2010 Energy Diversification Act, in its Statement of Motives, acknowledged the significant adverse effects that stem from Puerto Rico's dependence on imported fuel oil, noting, *inter alia*, that "the electric power cost is twice as high in Puerto Rico than the average cost

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[50] The only other source of natural gas in Puerto Rico is the LNG terminal located near Peñuelas and owned by EcoElectrica, L.P. ("EcoElectrica"), which was certificated in 1996. *See EcoElectrica, L.P.*, 75 FERC ¶ 61,157 (1996). A natural gas pipeline that initially was planned to supply the Aguirre Power Plant from the EcoElectrica LNG facility was formally cancelled in 2009, and no alternative delivery currently exists.

[51] Indeed, the Commission has already made this finding in the context of EcoElectrica's (now cancelled) pipeline proposal to supply the Aguirre Power Plant with natural gas. *See EcoElectrica, L.P.*, 127 FERC ¶ 61,044, at P 15 (2009) ("EcoElectrica's LNG terminal was the first, and remains the only, source of natural gas in Puerto Rico. EcoElectrica's proposed project will enable it to deliver natural gas to [PREPA's] Aguirre [Power] Plant, replacing No. 2 distillate oil as the plant's fuel for generating electricity. The increase in natural gas supply is an environmentally acceptable alternative to oil in meeting the anticipated increases in electric demand in Puerto Rico.").

thereof in the rest of the United States, and the average Puerto Rican pays about twenty cents per kilowatt-hour (kWh)."[52] PREPA's natural gas conversion program for its fuel oil-burning generating facilities, such as the Aguirre Power Plant, is an important element of the reform strategy. Accordingly, the Aguirre Project (including the LNG Terminal facilities proposed in this Application) will permit PREPA, consistent with its fuel diversification strategy, to utilize natural gas at the Aguirre Power Plant as an alternative fuel, thereby lessening PREPA's overall dependence on oil for power generation purposes.

Third and most important, the Project is vital to achieving compliance with the MATS Rule. The Aguirre Power Plant is an oil-fired generating facility that will have no access to natural gas but for this Project. As of April 2016 at the latest, PREPA will be required to significantly lower emission levels at the Aguirre Power Plant for certain atmospheric pollutants to comply with the MATS Rule or face penalties or other sanctions. The dual fuel capability implemented by this proposal will allow the Aguirre Power Plant to meet the requirements of the MATS Rule, without having to limit the output of the facility and without affecting PREPA's operations and the overall reliability of Puerto Rico's electric system.

The significance of the Project for PREPA's timely compliance with the MATS Rule cannot be overstated. According to PREPA, the retrofitting of the oil-fired units, such as those used at the Aguirre Power Plant, to burn natural gas is the only feasible means for PREPA to meet the requirements of the MATS Rule on time. A recent report issued by the Puerto Rico Intersectoral Committee on Environmental Compliance and Energy Alternatives ("ICECEA") confirms this conclusion. The ICECEA was created by an executive order[53] and included the heads of Commonwealth agencies and certain professional organizations to conduct a

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[52] *See* ft. 6.

[53] *See* Executive Order OE-2012-06, issued by the Governor of Puerto Rico (Feb. 15, 2012).

comprehensive study on the necessary measures to comply with the MATS Rule and certain other regulations. The study was published on June 15, 2012, concluding that "the fastest and most economically viable way to comply with [the MATS Rule] is the conversion of power plants to natural gas on or before 2016."[54] According to ICECEA, the natural gas conversion will "allow PREPA to comply with the dates specified in [the MATS Rule], and maintain the generation and transmission system stable and cost effective."[55]

Fourth, construction of the Project will reduce the need for large fuel oil barges to travel through and maneuver in Jobos Bay to supply the Aguirre Power Plant. Presently, large fuel oil barges use the existing navigational channel in Jobos Bay to deliver fuel twice weekly to the Aguirre Plant. By significantly reducing the number of barge fuel deliveries made through Jobos Bay, the number of disturbances in the bay will decrease, consequently benefitting the recreational, ecotourism and fishing industries, while the reliability of fuel delivery will be improved.

Finally, this proposal does not implicate the Certificate Policy Statement's cross-subsidization concerns and is otherwise consistent with its goals. The Aguirre Project is a new project and the Applicant has no existing customers or captive ratepayers. Any adverse effects of the Project will be minimal and appropriately mitigated. In any event, the public benefits that will be realized if the Project is effectuated greatly outweigh any potential adverse impacts. Accordingly, the proposed LNG Terminal is consistent with the public interest and should be approved by the Commission.

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54 *Report on the Necessary Measures to Comply with new EPA Regulations, and the Conversion to, and Use of Natural Gas In, the Northern Power Plants* at 22 (June 15, 2012), http://www.gdb-pur.com/documents/FINAL-InformeCICAAEGobernador-English-firmado.pdf.

55 *Id.* at 14.

B. The Applicant's Proposal Will Improve Access to Supplies of Natural Gas and Serve New Market Demand (18 C.F.R. § 153.7(c)(1)(i))

The Project will improve access to supplies of natural gas and serve new market demand because it will provide a direct source of natural gas to a location with a large existing electricity generating facility that does not enjoy, and has never enjoyed, any type of natural gas supply. As explained above, the Project, including the proposed LNG Terminal facilities, is a critical element of PREPA's strategy to end Puerto Rico's dependence on imported fuel oil as the primary fuel source for electricity generation by converting existing oil-fired power plants to using natural gas as a fuel source. To date, PREPA has converted or is in the process of converting all or portions of the following power plants, giving them dual-fuel capability: 1) units 5 and 6 at the Central San Juan Power Station; 2) the Costa Sur Power Station located near Peñuelas, Puerto Rico; and 3) the Aguirre Power Plant. Of these three plants, however, only the Costa Sur Power Station has access to natural gas.

Consequently, there presently exists no feasible alternative to the proposed Project to supply natural gas to the Aguirre Power Plant. The capacity of the only other LNG terminal facility on the island, the EcoElectrica plant, is committed and, in any event, is not deliverable to the Aguirre Power Plant. Accordingly, it is expected that PREPA will contract for 100 percent of the Project's available capacity, including storage and available throughput. The proposed Project, therefore, would provide the means to supply the Aguirre Power Plant with natural gas and would constitute a new source of supply, increase available gas volumes contributing to the fulfillment of current and future market demand and provide a lower-cost and more diverse energy supply to the island.

C. The Applicant's Proposal Will Not Affect Existing Customers (18 C.F.R. § 153.7(c)(1)(ii))

As noted, the Applicant does not have existing customers who might be adversely affected by the proposed Project. If the Project is approved and constructed, the Applicant would have only one customer, PREPA, which plans to contract for 100 percent of the Project's available capacity and to use that entire supply to fuel the Aguirre Power Plant.

D. The Applicant's Proposal Will Not Involve Any Existing Contracts with Foreign Governments (18 C.F.R. § 153.7(c)(1)(iii))

The Applicant does not have any contracts with foreign governments or persons concerning the control of operations or rates for the delivery or receipt of natural gas that may restrict or prevent other United States companies from extending their activities in the same general area.

VI. OTHER MISCELLANEOUS REQUIREMENTS

A. Open Access Service (18 C.F.R. § 153.7(c)(2))

The Applicant seeks authorization to provide LNG terminaling services at the rates, terms and conditions mutually agreed to with its sole customer, PREPA, and does not propose to offer open-access terminaling services or maintain a tariff and rate schedules for such services, consistent with the requirements of Section 3(e)(3)(B)(ii) of the NGA.[56] The Project does not include any pipeline facilities certificated under Section 7 of the NGA and no transportation services will be provided under that provision.

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[56] 15 U.S.C. § 717b(e)(3)(B)(ii) (2006) ("Before January 1, 2015, the Commission shall not -- condition an order on -- (I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order; (II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or (III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.").

B. Certification As To Landowner Notification (18 C.F.R. § 380.12(c)(10))

The Applicant hereby certifies that all affected landowners will be notified as required by 18 C.F.R. § 157.6(d) (2012).

C. Import Authorizations (18 C.F.R. § 153.6)

Any shipper utilizing the LNG Terminal will be required to obtain authorization for the import of natural gas from the Office of Fossil Energy of the U.S. Department of Energy. It is currently expected that PREPA will either import or procure the LNG to be used for the Project. Because the Applicant does not intend to import natural gas for use at the Project, it is not required to obtain this authorization.[57]

D. No Presidential Permit Is Required (18 C.F.R. § 153.15)

The proposed LNG Terminal does not include any facilities at the borders of the United States and Canada or Mexico for the export or import of natural gas to or from those countries. Therefore, the Presidential Permit is not required.[58]

E. Follow-On Waterway Suitability Assessment ("WSA")

As required by 18 C.F.R. § 157.21(f)(13) and 33 C.F.R. § 127.007, the Applicant is submitting a Follow-On WSA to the USCG concurrently with this Application.

F. Consistency Statement Under the Coastal Zone Management Act (15 C.F.R. § 930.57)

As required by Section 307 of the Coastal Zone Management Act,[59] the Applicant makes the following certification: "The proposed activity complies with the enforceable policies of the

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[57] *See, e.g., Freeport LNG Development*, 107 FERC ¶ 61,278 n.9 (2004) ("Freeport has not applied for import authorization from the Department of Energy because it does not intend to use the proposed facilities to import LNG on its own behalf. ConocoPhillips and Dow Chemical will need to apply for import authorization.").

[58] The Commission previously made this finding in connection with the other jurisdictional LNG terminal facility located on the island. *See EcoElectrica, L.P.*, 75 FERC ¶ 61,157, at 61,518 n.13 (1996) (noting that the proposed facilities will be located on the border of the Commonwealth of Puerto Rico and international waters, thus eliminating the need for a Presidential Permit).

Commonwealth of Puerto Rico's approved management program and will be conducted in a manner consistent with such program." Concurrently with this application, the Applicant is submitting a copy of this certification and necessary data and information supporting such certification to the Public Service Commission, attention Mr. Omar Negrón Judice, of the Commonwealth of Puerto Rico.

G. Other Related Applications

In addition to the authorizations requested herein, the siting, construction and operation of the Project will require a number of other permits and regulatory approvals. These are described in Exhibit H to this application.

H. Request for Waivers

The Applicant respectfully requests that the Commission grant any waivers and any other appropriate relief that is deemed necessary to approve this application.

I. Notice

A Form of Notice suitable for publication in the *Federal Register* is attached hereto.

J. In-Service Date

The Applicant has selected a March 2015 in-service date for the Project.

VII. EXHIBITS

The Applicant submits the following exhibits required pursuant to Section 153.8 of the Commission's regulations.[60]

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[59] 16 U.S.C. § 1456 (2006).
[60] 18 C.F.R. § 153.8 (2012).

Exhibit	Description
Exhibit A § 153.8(a)(1)	A certified copy of the Applicant's certificate of formation, evidence of good standing in Delaware from the Secretary of State, the Applicant's operating agreement, and a list of officers stating their nationality
Exhibit B § 153.8(a)(2)	A detailed statement of the financial and corporate relationship existing between the Applicant and any other person or corporation is attached.
Exhibit B-1	A diagram of proposed financing arrangements for the Aguirre Project
Exhibit C § 153.8(a)(3)	An opinion of counsel showing that the construction and operation of facilities for the import of natural gas is within the authorized powers of the Applicant, and that the Applicant has complied with the laws and regulations of the state(s) in which the Applicant operates.
Exhibit D (omitted) § 153.8(a)(4)	Not applicable because this Project is not for a pipeline interconnection located on the border between the United States and Canada or Mexico.
Exhibit E § 153.8(a)(5)	Information concerning the qualifications of the Applicant to import natural gas is contained in Resource Report 13 of Exhibit F.
Exhibit E-1 § 153.8(a)(6)	A report on earthquake hazards and engineering information for the Project's facilities are included in Resource Reports 6 and 13, respectively, as found in Exhibit F.
Exhibit F § 153.8(a)(7)	An environmental report (consisting of Resource Reports 1-11 and 13) prepared in accordance with Part 380 of the Commission's regulations is being submitted with this Application.
Exhibit G § 153.8(a)(8)	A geographic map of the Project (also included as Figure 1 of Resource Report 1 of Exhibit F).

Exhibit	Description
Exhibit H § 153.8(a)(9)	A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or Commonwealth of Puerto Rico agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected is attached.

VIII. CONCLUSION

WHEREFORE, for the reasons set forth in this Application and its supporting Exhibits, the Applicant respectfully requests that the Commission grant the authorizations requested herein. The Applicant also respectfully requests that the Commission grant any waivers and other authorizations or relief deemed necessary by the Commission for the Applicant to receive Commission approval of this Application. Finally, the Applicant submits that prompt approval of this Application is in the public interest and accordingly respectfully requests that the Commission issue a final order by March 1, 2014.

Respectfully submitted,

/s/ *Ilia Levitine*

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Dated: April 17, 2013

APPENDIX 2

PHMSA Interpretation #PI-09-0009

U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 2 4 2009

Mr. Richard A. Abraham
Pipeline Safety Compliance Professional
Marathon Pipe Line L.L.C
539 South Main Street
Findlay, OH 45840-3295

Dear Mr. Abraham:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated September 29, 2008, you requested an interpretation of 49 CFR 192.1 and 192.3 of the Federal pipeline safety regulations. You asked whether a pipeline you use to supply gas to an offshore platform is subject to Part 192. You also asked what § 192.3 definition would apply to the pipeline if PHMSA determined that the line is subject to Part 192. You indicated that you believe that Part 192 does not apply to your pipeline because you are the consumer, transporter and owner of the gas used on the platform. Finally, you stated that your position was supported by two interpretations issued by the Materials Transportation Bureau, a PHMSA predecessor agency, in the 1980's.

Pursuant to Chapter 601, Title 49, United States Code, PHMSA has responsibility for protecting against risks to life, property, and the environment posed by pipelines. In carrying out its responsibilities, PHMSA has established design, construction, operation, and maintenance standards and regulations for gas pipelines and has responsibility for enforcing these requirements. Under 49 U.S.C. 60102(a)(1) and (2), these standards and regulations apply to both "pipeline transportation" and "pipeline facilities." The definition of pipeline transportation includes the gathering, transmission, and distribution of gas, and the definition of a gas pipeline facility includes "a pipeline, a right-of-way, a facility, building, or equipment" to be used in transporting gas (49 U.S.C. 60101(a)(3)).

You provided the following background information in support of your request: Marathon owns and maintains an offshore platform (Spark Platform) that is no longer used to produce gas. The Spark Platform receives gas from a 6-inch offshore pipeline which becomes a 3-inch onshore pipeline (collectively, "Platform Line"). Marathon operates the Platform Line at 990 psig. Gas usage is metered on the platform and typically indicates platform consumption of 300 mcf per month. The Platform Line receives gas from a 16-inch transmission line. Marathon operates the transmission line and jointly owns the line with another company. The transmission line transports gas produced by Marathon, the second owner and, occasionally, other companies.

Our responses to your requests for interpretation are as follows:

Our responses to your requests for interpretation are as follows:

1. Question – Does Part 192 apply to the Platform Line?

Answer – Yes. The Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*) and 49 C.F.R. Part 192 provide for safety regulation of pipeline facilities and the transportation of gas, without regard to who owns the gas. A sale of the gas is not required. Therefore, gas can be in transportation even if it is produced, transported and consumed by the same entity.[1]

2. Question – What § 192.3 definition applies to the Platform Line?

Answer – Based upon the information you provided, the Platform Line is a transmission line because it is operated at a hoop stress of 20 percent or more of SMYS. Section 192.3 provides that a 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. The Platform Line is not a gathering line because it does not transport gas from a production well to a transmission line. The Platform Line is operated at a pressure of 990 psig, a hoop stress of 20 percent or more of SMYS.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at (202) 366-4046.

Sincerely,

John A. Gale
Director, Office of Regulations

[1] In light of the broad applicability of the Pipeline Safety Laws, the narrower view reflected in the 1980 and 1983 MTB interpretations cited by Marathon has long since been superseded. *See e.g.* July 14, 1992 DuPont Interpretation and September 14, 1992 Steer, Strauss, White & Tobias (Armco) Interpretation.

Environmental, Safety & Regulatory Compliance

Marathon Pipe Line LLC

539 South Main Street
Findlay, OH 45840-3295
Telephone 419/421-3529

September 29, 2008

Associate Administrator for Pipeline Safety
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Re: Request for 49 CFR Part 192 Interpretation (§§192.1 and 192.3)

To Whom It May Concern:

Background

Marathon Oil Company ("Marathon") owns and maintains the Spark Platform located offshore in Alaska's Cook Inlet; however, gas production operations were suspended in 2005, and a return to production is improbable.

The offshore 6-inch pipeline, a non-regulated gathering line until production operations ceased, becomes 3-inch onshore (the "Platform Line"), connects to an onshore 16-inch transmission line ("Transmission Line"). That Transmission Line is solely operated by Marathon but jointly owned by Marathon and a second transporter ("Owners"). Further to that Transmission Line: it typically transports Owners' gas, but occasionally it carries third-party gas along with that of the Owners.

The Platform Line is now used to transport gas back to the platform for use as fuel for electric generators and other gas utilization needs of that facility. The Spark Platform's gas usage is accounted for by metering and subtraction from Marathon's portion of the Transmission Line's throughput.

The Owners' gas transported by the Transmission Line originates from the Owners' production wells.

Question

Is Marathon's Platform Line that now supplies gas as a fuel for the Spark Platform from the Transmission Line subject to Part 192? If so, what §192.3

definition would apply to this fuel line, i.e., gathering or transmission?

Marathon's Position

Based on the following two interpretations issued by your office:

- September 8, 1980, Mr. Melvin Judah, Acting Associate Director, MTB to Mr. Raymond M. Ripple, E. I. Du Pont De Nemours & Company, Wilmington, Delaware
- May 19, 1983, Mr. Richard L. Beam, Associate Director, MTB to Mr. Kim R. Henry, Fountain Valley, California

Marathon's opinion is that the Platform Line is not subject to Part 192, since the concept expressed in both interpretations appears to apply to the conditions existing at the Spark Platform. That concept is that the consumer, transporter, and producer are the same person, so, in effect, the consumer owns the gas as soon as it is produced, or as soon as it enters the consumer-owner pipeline; therefore, there is no transportation of gas between producer and consumer that is subject to the jurisdiction of Part 192.

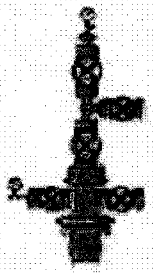
We recognize that previous interpretations may be relied upon only by those persons to whom they were addressed, and it is for that reason that we now seek an interpretation based on the specific set of facts and circumstances provided herein.

Sincerely,

Richard A. Abraham
Pipeline Safety Compliance Professional

Attachment: Installation Sketch

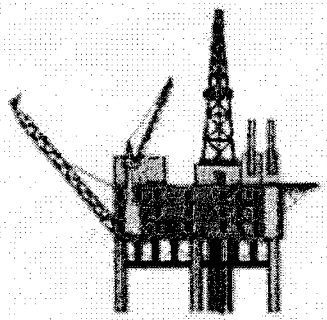
Owner's Gas Production



Owner Operated Gas Transmission Pipeline

Gas to Market

Platform Line



Spark Platform (Owner's)