

June 5, 2017

Mr. Jack A. Fusco
President and CEO
Cheniere Energy, Inc.
700 Milam Street, Suite 1900
Houston, Texas 77002

Re: CPF No. 4-2016-3001

Dear Mr. Fusco:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$46,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Jon Manning, Acting Director, Southwest Region, OPS
Mr. Douglas D. Shanda, Senior Vice President, Terminal Operations, Cheniere Energy,
Inc., 700 Milam Street, Suite 1900, Houston, Texas 77002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

§ 191.22 National Registry of Pipeline and LNG Operators.

(a) *OPID Request.* Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with § 191.7.

The Notice alleged that Respondent violated 49 C.F.R. § 191.22(a) by failing to obtain from PHMSA an OPID. Specifically, the Notice alleged that CCL failed to request an OPID from PHMSA prior to beginning construction of its LNG facility. Although construction was set to begin on June 1, 2015, CCL did not request an OPID from PHMSA until June 27, 2016, more than one year after the anticipated start date of the construction project.

In its Response, CCL stated that it did not qualify as an operator because its LNG facility was still under construction at the time of the alleged violation. Therefore, it did not need to apply for an OPID under 49 C.F.R. § 191.22(a). For administrative ease, however, it submitted an OPID assignment request on June 27, 2016.

Section 191.22(a) requires “each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility” to obtain an OPID from PHMSA. One of the purposes of an OPID is to enable an operator to file reports with PHMSA. For example, § 191.22(c) requires operators to notify PHMSA before construction of LNG facilities commences.² Thus, it is clear that the federal pipeline safety regulations apply to entities, like Respondent, who are engaged in the construction of LNG facilities. The fact that liquefied natural gas has not started flowing is not determinative of their application. By engaging in the construction and design of its LNG facility, CCL qualified as an operator under Part 191 and needed to apply for an OPID under 49 C.F.R. § 191.22(a) in order to report the construction to PHMSA.

Accordingly, after considering all of the evidence, I find that CCL violated 49 C.F.R. § 191.22(a) by failing to obtain an OPID from PHMSA. This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 191.22(c)(1)(iii), which states:

§ 191.22 National Registry of Pipeline and LNG Operators.

(a) . . .

(c) *Changes.* Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events.

² See 49 C.F.R. Part 193 providing design and construction requirements for LNG facilities.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) . . .

(iii) Construction of a new LNG plant or LNG facility.

The Notice alleged that Respondent violated 49 C.F.R. § 191.22(c)(1)(iii) by failing to notify PHMSA electronically through the National Registry of Pipeline and LNG Operators of the construction of a new LNG facility no later than 60 days before construction began. Specifically, the Notice alleged that CCL began construction of its LNG facility on May 13, 2015, but did not notify PHMSA of the construction until June 27, 2016, well beyond the requirement to report 60 days prior to beginning construction, as set forth in 49 C.F.R. § 191.22(c)(1)(iii).

In its Response, CCL stated that it began work on its LNG facility construction project on June 1, 2015, the date construction activities commenced. It did not begin construction on May 13, 2015, which was the commercial notice date. Even if construction began on June 1, 2015, however, I find that CCL needed to report to PHMSA no later than April 2, 2015. CCL, however, did not report the construction of its new LNG facility until June 27, 2016, well beyond the 60-day limit.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 191.22(c)(1)(iii) by failing to notify PHMSA of the construction of a new LNG facility no later than 60 days before construction began. This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$46,000 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$23,000 for Respondent's violation of 49 C.F.R. § 191.22(a) for failing to obtain an OPID. CCL was required to obtain an OPID from PHMSA to report the construction of its LNG facility, but failed to do so. Although its actions minimally affected pipeline safety or integrity, Respondent failed to take appropriate action to comply with a requirement that was clearly applicable for more than one year. Accordingly, having reviewed

the record and considered the assessment criteria, I assess Respondent a civil penalty of \$23,000 for violation of 49 C.F.R. § 191.22(a).

Item 2: The Notice proposed a civil penalty of \$23,000 for Respondent's violation of 49 C.F.R. § 191.22(c)(1)(iii) for failing to timely notify PHMSA of the construction of its LNG facility. CCL was required to report the construction of the new LNG facility to PHMSA no later than 60 days from the construction start date. However, PHMSA was not notified of the LNG construction project until approximately one year after construction began, far exceeding the 60-day requirement set forth in 49 C.F.R. § 191.22(c)(1)(iii). The proposed penalty took into account that Respondent failed for more than one year to take appropriate action to comply with a requirement that was clearly applicable. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$23,000 for violation of 49 C.F.R. § 191.22(c)(1)(iii).

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of \$46,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$46,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of the Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final

Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

June 5, 2017

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued