

February 17, 2021

VIA ELECTRONIC MAIL TO: msmith@freoportlng.com

Mr. Michael S. Smith
Chairman and Chief Executive Officer
Freeport LNG Development, LP
333 Clay Street, Suite 5050
Houston, TX 77002

Re: CPF No. 4-2020-3003

Dear Mr. Smith:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$263,347, and specifies actions that need to be taken by Freeport LNG Development, LP to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by electronic mail is effective upon the date of transmission as 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: Ms. Mary McDaniel., Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Mark Mallet, Vice President, Operations and Engineering, Freeport LNG Development,
mmallet@freoportlng.com
Mr. Michael Stephenson, Regulatory Compliance Manager, Freeport LNG Development,
mstephenson@freoportlng.com

CONFIRMATION OF RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

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In the Matter of)	
)	
Freeport LNG Development, LP,)	CPF No. 4-2020-3003
)	
Respondent.)	
)	

FINAL ORDER

On August 7, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the liquefied natural gas (LNG) export facility (Facility) operated by Freeport LNG Development, LP (FLNG or Respondent), in Quintana, Texas. PHMSA initiated its inspection following an August 1, 2019 unintended release of natural gas related to a piping failure that occurred at the Facility during commissioning. The Facility includes three new liquefaction trains (Trains 1, 2 and 3) positioned in parallel and occupying a 2,140-foot-long by 860-foot-wide rectangular footprint west of the existing Facility area. Each train would be capable of producing 4.4 million metric tons per annum (mtpa) of LNG for export, which equates to a total liquefaction capacity of approximately 1.8 Bcf/d of natural gas. Each train would produce 4.48 mtpa of LNG; beyond the 4.4 mtpa that would be available for export, the remaining 0.08 mtpa would become boil-off gas (BOG).¹

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated August 7, 2020, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that FLNG had committed three violations of 49 C.F.R. Part 193 and proposed assessing a civil penalty of \$263,347 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations.

FLNG responded to the Notice by letter dated August 25, 2020 (Response). The company did not contest the allegations of violation but provided an explanation of its actions and requested that the proposed civil penalty be reduced. FLNG did not request a hearing and therefore has waived its right to one.

¹ Pipeline Violation Safety Report (on file with PHMSA). Separate from this matter, PHMSA issued to FLNG a Notice of Proposed Safety Order (NOPSO) (CPF No. 4-2019-3002S) on August 29, 2019. As a result of the NOPSO, pursuant to 49 C.F.R. § 190.239, the parties entered into a Consent Agreement and Order, dated February 14, 2020, whereby FLNG agreed to take corrective measures to address safety issues raised by the incident.

FINDINGS OF VIOLATION

In its Response, FLNG did not contest the allegations in the Notice that it violated 49 C.F.R. Part 193, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 193.2011, which states:

§ 193.2011 Reporting.

Incidents, safety-related conditions, and annual pipeline summary data for LNG plants or facilities must be reported in accordance with the requirements of Part 191 of this subchapter.

The Notice alleged that Respondent violated 49 C.F.R. § 193.2011 by failing to notify the National Response Center (NRC) of an incident that occurred at its LNG facility on Quintana Island, Texas on August 1, 2019. Specifically, the Notice alleged that the incident resulted in estimated property damage (including cost of repairs) exceeding \$50,000 and unintentional estimated gas loss of more than 300 million cubic feet, and was therefore required to be reported to the NRC as soon as practicable, but not later than one hour after discovery, pursuant to §§ 191.3 and 191.5.² Furthermore, the Notice alleged that FLNG failed to comply with its own procedures, Appendix L PHMSA Incident Reporting Requirements, which requires FLNG to notify the NRC following “an event that results in an emergency shutdown of an LNG facility.” Finally, the Notice alleged that PHMSA first learned of the incident from another Federal agency five days after the incident occurred.

Respondent did not contest this allegation of violation, but offered additional information and corrections to either reduce or eliminate the proposed civil penalty. I discuss the additional information below with respect to the proposed civil penalty. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 193.2011 by failing to notify the NRC as soon as practicable but not later than one hour after discovery of an incident that occurred at its LNG facility on Quintana Island, Texas on August 1, 2019.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 193.2503(b), which states:

§ 193.2503 Operating procedures.

Each operator shall follow one or more manuals of written procedures to provide safety in normal operation and in responding to an abnormal operation that would affect safety. The procedures must include provisions for:

- (a)
- (b) Startup and shutdown, including for initial startup, performance testing to demonstrate that components will operate satisfactory in service.

The Notice alleged that Respondent violated 49 C.F.R. § 193.2503(b) by failing to follow its

² A reportable incident includes, among other things, an event that involves a release of gas from an LNG facility that results in estimated property damage of \$50,000 or more, or unintentional estimated gas loss of 3 million cubic feet or more. § 191.3.

written procedure for the startup of its Quintana Island LNG facility. Specifically, Respondent performed an operation for which it did not have a written procedure. Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 193.2503(b) by failing to follow its written procedure by using a 2-inch line for an operation outside of the design specifications for the piping in an effort to reduce the cool down time.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 193.2515(c), which states:

§ 193.2515 Investigation of failures.

(a)

(c) If the Administrator or relevant state agency under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) investigates an incident, the operator involved shall make available all relevant information and provide reasonable assistance in conducting the investigation. Unless necessary to restore or maintain service, or for safety, no component involved in the incident may be moved from its location or otherwise altered until the investigation is complete or the investigating agency otherwise provides. Where components must be moved for operational or safety reasons, they must not be removed from the plant site and must be maintained intact to the extent practicable until the investigation is complete or the investigating agency otherwise provides.

The Notice alleged that Respondent violated 49 C.F.R. § 193.2515(c) by failing to make available to PHMSA all relevant information and provide reasonable assistance to PHMSA's investigation following the incident that occurred on August 1, 2019. Specifically, Respondent removed the failed component from the incident site, without PHMSA permission, after being informed PHMSA was investigating the incident.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 193.2515(c) by failing to provide reasonable assistance while PHMSA conducted its investigation.

These findings of violation will be considered prior offenses 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.³ 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

³ These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

degree of Respondent's culpability; the history of Respondent's prior offenses; 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 \$263,347 for the violations cited above.

Item 1: The Notice proposed a civil penalty of \$44,700 for Respondent's violation of 49 C.F.R. § 193.2011, for failing to notify the NRC of an incident that occurred at its LNG facility on Quintana Island, Texas on August 1, 2019.

In its Response, FLNG argued that the proposed civil penalty should be reduced or eliminated. FLNG based its position on several arguments. First, FLNG asserted that the Notice contains a factual inaccuracy regarding the amount of gas released. The Notice alleged that 315 million cubic feet (MMCF) of gas was released when the correct amount was 315 thousand cubic feet (MCF), possibly due to an inadvertent conversion from MCF to MMCF. FLNG argued that this factual inaccuracy warrants a reduction in the civil penalty amount. FLNG is correct that the volume of gas released identified in the Notice is inaccurate. The amount of gas released was 315 MCF, not 315 MMCF. However, the amount of gas released was not a factor considered in the calculation of the proposed civil penalty.⁴ Therefore, the correction to the record regarding the amount of gas released does not warrant a reduction or withdrawal of the proposed civil penalty for this Item.

FLNG's second argument is directed at the allegations in the Notice that support the underlying violation. Specifically, FLNG argued that within one hour of the event, it did not know that the event met the definition of "incident" under § 191.3.⁵ The three prongs of the definition that are particularly relevant to this event, as argued by Respondent, are: (1) whether the event resulted in estimated property damage of \$50,000 or more, including the loss to the operator and others, or both; (2) whether the event is significant in the judgment of the operator, even though it did not meet the other criteria of "incident"; and (3) whether the event resulted in an emergency shutdown of an LNG facility.⁶ According to FLNG, because it did not believe that any of these prongs were met within one-hour of the release, it should not be subject to such a high civil penalty for its admitted non-compliance. I note that Respondent did not make this argument with respect to the underlying allegation of violation, which FLNG did not contest and therefore waived its right to challenge.⁷

The relevant considerations when determining a proposed civil penalty are the civil penalty

⁴ Moreover, the Violation Reported recognized this violation as "minimally" affecting pipeline safety.

⁵ Response, at 2-4.

⁶ Respondent also noted that the incident did not result in death or personal injury necessitating in-patient hospitalization; however, I note that the Notice never alleged either of those had occurred.

⁷ *See id.* at 1 ("While FLNG does not believe that a violation of these regulations has occurred, as a matter of administrative economy, we have determined not to contest the alleged violation itself . . .").

assessment considerations set forth in § 190.225. At best, the argument put forward by FLNG regarding its failure to report to the NRC is directed at its good faith in attempting to achieve compliance.⁸ Even when viewed in this regard, however, FLNG's argument does not warrant a reduction of the proposed civil penalty.

Under the regulation, operators are required to report an incident to the NRC on the basis of an estimated property damage cost, not the actual costs. Furthermore, an operator may not delay an incident report to the NRC based on the amount of time it takes to calculate the actual dollar amount of any property damage. The release occurred on August 1, 2019. FLNG's first notification to PHMSA about the release was not made until August 19, 2019. In that report, FLNG underestimated the property damage as \$35,500. On August 23, 2019, FLNG filed a supplemental report and increased the property damage to \$45,500. It was not until October 2019 that FLNG eventually reported the actual costs of the incident to PHMSA which was determined to be \$76,221.80. FLNG underestimated the property damage costs by more than 110 percent from its initial report to its final report. Further, FLNG did not provide its final estimate of the costs associated with the release until after nearly two months and several exchanges between PHMSA and FLNG to confirm the property damage costs. Under these facts, I am not persuaded that FLNG acted in good faith in underestimating the costs associated with the release. Respondent should have estimated that the \$50,000 threshold had been met and reported the incident to the NRC accordingly.

In addition, while FLNG failed to submit a timely notification to NRC under PHMSA's regulation, it did actively notify the Federal Energy Regulatory Commission (FERC) and other entities, including an office of Quintana, Texas, within hours following the release. FLNG asserts that even though it notified FERC and other entities of the release, it did not view the release as "significant," creating any obligation to notify the NRC. The release resulted in a complete failure and separation of piping, as well as a shutdown of its LNG facility that was caused by the operator's improper deviation from its startup procedures. The facts in the record demonstrate that Respondent should have viewed this release as "significant" and notified the NRC, notwithstanding that it failed to properly estimate the related property damage and costs.

Finally, FLNG argues that an emergency shutdown of its LNG facility did not occur as a result of the release. In making this argument, FLNG asserts that it only initiated a "controlled" shutdown of the facility by slowing the refrigeration compressors down to a safe shutdown point in the control system and then manually taking the facility offline. According to FLNG, this is not an emergency shutdown of an LNG facility that triggers a notification to the NRC. I disagree. The facts show that the incident resulted in an emergency shutdown of the facility as a direct result of the release. Specifically, the operations in the Main Cryogenic Heat Exchanger were suspended immediately after the failure due to the release, and, as FLNG admits, the entire facility was taken offline.

All of the above facts taken together rebut any argument that FLNG acted in good faith when it did not believe the event triggered a requirement to make an NRC report within one-hour of the release. FLNG presented no evidence or argument to rebut any of the other penalty assessment

⁸ § 190.225(a)(4).

considerations selected by the Director in the Violation Report that were used to calculate the proposed civil penalty for this Item.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$44,700 for violation of 49 C.F.R. § 193.2011.

Item 2: The Notice proposed a civil penalty of \$218,647 for Respondent's violation of 49 C.F.R. § 193.2503(b), for failing to follow its written procedure for the startup of its Quintana Island LNG facility. This violation was found to be causal to the incident. FLNG neither contested the allegation nor presented any evidence or argument justifying a reduction in or elimination of the proposed penalty, and stated that it would pay the proposed civil penalty as directed. I find that the penalty assessment criteria selected by the Director that were used to calculate the proposed civil penalty are supported by the record and unchallenged by Respondent. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$218,647 for violation of 49 C.F.R. § 193.2503(b).

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 **\$263,347**.

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 \$263,347 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.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Item 3 in the Notice for violation of 49 C.F.R. § 193.2515(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of liquefied natural gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 193.2515(c) (**Item 3**), Respondent must:
 - A. In regard to Item Number 3 of the Notice pertaining to the operator's removal of failed components from the Terminal prior to direction from PHMSA, the operator shall ensure that its procedures for investigations of failures within the LNG facility clearly demonstrate alignment with the requirements of § 193.2515. If in its review, the operator determines revision are required, pertinent personnel must be made aware of any changes to the processes.
 - B. FLNG must submit all procedures and necessary revisions to the PHMSA Southwest Region Director within 30 days of issuance of this Final Order.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

It is requested (not mandated) that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

Under 49 C.F.R. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

February 17, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued