



August 25, 2020

Mary L. McDaniel, P.E.
Director, Southwest Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Pipeline Safety
8701 S. Gessner, Suite 630
Houston, TX 77074

Sent via Email

**Re: CPF 4-2020-3003; Freeport LNG Development, L.P.
Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance
Order (NOPV)**

Dear Ms. McDaniel:

This letter is in response to the above-referenced NOPV, dated August 7, 2020. The NOPV has alleged that Freeport LNG Development, L.P. (FLNG) committed three (3) probable violations of the Pipeline Safety Regulations (Title 49, Code of Federal Regulations). This response is being provided in accordance with the provisions of 49 CFR Part 190, Subpart B (§§ 190.201-190.243).

With respect to Item 2 (alleging a failure to comply with §193.2503), FLNG does not contest the allegations and will provide payment of the proposed civil penalty in accordance with the instructions provided. With respect to Item 3 (alleging a failure to comply with §193.2515), while FLNG notes that it was FLNG's on-site contractor that removed the failed component (without either PHMSA or FLNG authorization), FLNG recognizes that it has ultimate responsibility for regulatory compliance as the operator under PHMSA jurisdiction and does not contest the allegations. We intend to take the actions outlined in the proposed compliance order within the time frame set forth therein (as initiated by issuance of the Final Order).

With respect to Item 1 (alleging a failure to comply with §193.2011 and §191.5), FLNG would like to take this opportunity to present additional information and make corrections to inaccurate information in the NOPV with the intent to either reduce the proposed civil penalty or eliminate it altogether. 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, but to offer additional information and corrections in hopes that it will reduce or eliminate the proposed civil penalty while allowing this matter to proceed to Final Order without taxing PHMSA with additional administrative proceedings.

Section 193.2011 requires that "Incidents ...be reported in accordance with the requirements of Part 191 of this subchapter." Pursuant to Section 191.5(a), operator must notify the National Response Center of "each incident as defined in §191.3" as soon as practicable following discovery



of the incident “but no later than one hour” after discovery. Pursuant to the NOPV, it is alleged that FLNG “failed to notify the NRC of the incident within one hour of the release, as required by §191.5 and §193.2011, as well as the requirements of FLNG’s own procedures.”¹ Incident is defined in §191.3 as follows:

Incident means any of the following events:

- (1) An event that involves a release of ... gas from an LNG facility, and that results in one or more of the following consequences:
 - i. A death, or personal injury necessitating in-patient hospitalization;
 - ii. Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost; or
 - iii. Unintentional estimated gas loss of three million cubic feet or more.
- (2) An event that results in an emergency shutdown of an LNG facility.... Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.
- (3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

In order to meet the notification requirements of Section 191.5 and provide notice to the NRC within one hour of the incident, one or more prongs in the definition of incident in Section 191.3 would need to have been triggered (or at least known by operator that it would be triggered as a result of the incident) within one hour after discovery of the incident. Prong (1) above requires a release of gas from an LNG facility in conjunction with one of three sub-prongs: (i) death or personal injury requiring in-patient hospitalization, (ii) estimated property damage of \$50,000 or more or (iii) the unintentional estimated gas loss of three million cubic feet or more. None of the three sub-prongs were met within the one-hour time frame after discovery of the incident and, as a result, there should not have been a violation of this regulation under Prong (1).

First, no death or personal injury occurred as a result of the August 1, 2019 pipe rupture incident. Second, as was reported in the original Incident Report to the NRC and each supplement thereto for this incident, the estimated volume of gas released unintentionally was 315,000 cubic feet (MCF) or 0.315 million cubic feet. This estimate was also provided to PHMSA staff via email from FLNG’s Mark Rascoe to PHMSA’s Dr. Rickenson Daniel on August 19, 2019. The NOPV states that there was an “unintentional gas loss of 300 million cubic feet.” This is not accurate based upon FLNG’s calculated amount of unintended gas released, and FLNG has not been able to identify in any correspondence with PHMSA where this amount of gas was estimated to have been lost. It is possible that the reported 315 MCF (i.e., 315,000 cubic feet) may have been inadvertently converted to 315 MMCF (i.e., 315,000,000 cubic feet) by PHMSA in its review of the incident and information provided by FLNG.

¹ FLNG’s own procedures were referenced in the NOPV because FLNG’s PHMSA Incident Reporting procedures impose the requirements of §§191.5 and 193.2011 and would have required notice to the NRC within one hour if an incident had occurred.



Third, within one hour after the incident, FLNG did not estimate the property damage to exceed \$50,000. In the original Incident Report filed August 19, 2019, FLNG estimated the property damage at \$35,500. In a supplemental Incident Report filed August 23, 2019, the estimated property damage was increased to \$45,500. As such, FLNG could not have determined that a notification was necessary to the NRC within one hour of the incident as a result of the \$50,000 estimated property damage threshold when it continued to estimate the property damage at less than \$50,000 for several weeks after the incident occurred. It was only after actual costs had been finalized and confirmed by FLNG's contractor (which occurred a few months later) did the costs exceed the \$50,000 threshold. The actual costs of the incident, rather than cost estimates, were requested by PHMSA pursuant to an email from Dr. Rickenson Daniel to FLNG's Mike Stephenson on August 26, 2019 after the estimated costs had been provided through the original Incident Report and its later supplement. Over the course of the next five weeks, FLNG worked with its contractor and PHMSA to gather and review actual, itemized costs for the incident. Ultimately, in early October, based upon information provided by FLNG's contractor that responded to the incident, the actual costs were determined to be \$76,221.80 (of which, \$56,971.80 had a direct nexus to the property damage). On October 3, 2019, FLNG sent this cost breakdown of actual costs to PHMSA (via email from FLNG's Mike Stephenson to PHMSA's Dr. Rickenson Daniel, with copy to PHMSA's David York and Jon Manning). Two months later, on December 9, 2019, PHMSA's Ashley Horton requested that FLNG update and finalize the Incident Report with these updated costs (via email from Ms. Horton to FLNG's Mike Stephenson). That same day, FLNG updated and finalized the Incident Report with the final, actual costs of the incident.²

Prong (2) in the definition of incident in Section 191.3 states that an "event that results in an emergency shutdown of an LNG facility" is considered an incident requiring notice within the one hour requirement. The NOPV states that "FLNG also initiated an emergency shutdown of the facility following discovery of the release." To the contrary, FLNG did not activate its emergency shutdown system after discovery of the incident. Once gas was detected as a result of the pipe rupture, FLNG 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. Consistent with this response, in Item 7 of Part A to the Incident Report, FLNG indicated that the incident did not result from an emergency shutdown. As such, FLNG does not believe that Prong (2) applies in the definition of incident.

Prong (3) in the definition of incident in Section 191.3 states that if an event is "significant in the judgment of the operator" then it would be considered an incident even if it didn't meet the criteria in Prongs (1) or (2) of the definition of incident. The NOPV states that "PHMSA further determined that FLNG had reported the incident to FERC on August 1, 2020, in the hours following the failure, as a significant event." It is correct that FLNG notified FERC of the event within several hours following the pipe failure on August 1, 2019. In retrospect, it would have been best if FLNG had notified FERC and PHMSA at the same time rather than notifying FERC first. This inconsistency in notifications, however, is not determinative that the pipe failure met

² Admittedly, the Final Incident Report, filed December 9, 2019, updated the total estimated property damage in Line 1.e of Part C to \$76,222, which is above the \$50,000 threshold in §191.3, but at that point, FLNG was updating the Incident Report with the total actual costs related to the event at the behest of PHMSA staff.



Prong (3) of the definition of incident in Section 191.3. While notification to FERC could be considered circumstantial evidence of FLNG's view of the event, it does not show that FLNG judged the event as "significant" in terms of the definition of incident in Section 191.3, particularly given that the information at the time did not otherwise warrant notification to the NRC under Prong (1) or (2). Further, in the email notification to FERC on August 2, 2019 (which was a follow-up to FLNG's verbal notification on August 1, 2019), we did not classify the event as "significant" or otherwise provide an opinion as to the magnitude of the event; we simply summarized the event, the initial response to the event, and the planned path forward. Therefore, while it would have been optimal in our response to notify PHMSA of the event concurrently with our notification to FERC, there is no evidence that shows that FLNG made a determination that the event was significant immediately following its occurrence in order to trigger Prong (3) of the definition of incident, thereby obligating FLNG to provide notice to the NRC within an hour after discovery of the event.

In closing, on the basis of the foregoing additional information, FLNG respectfully requests reconsideration of the assessment of a civil penalty in making your findings and issuing the Final Order as it respects the alleged violation and proposed civil penalty for Item 1. Should you have any questions or comments, please contact Michael Stephenson, Regulatory Compliance Manager (phone: (979) 415-8728, email: mstephenson@freeporlng.com).

Thank you for your cooperation and consideration in this matter.

Sincerely,

Mark W. Mallett

Mark W. Mallett, P.E.

cc: Michael Stephenson