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July 3, 2019

Mr. Howard Elliott
Administrator
Pipeline and Hazardous Materials Safety Administration (PHMSA)
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

RE: DOT Special Permit (SP) 20534, to authorize Energy Transport Solutions to transport LNG by rail tank car through the densely-populated Florida coast

Dear Administrator Elliott:

This letter requests a 30-day extension of the comment period to DOT's Draft Final Permit DOT-SP 20534 (the "special permit"), which proposes to authorize the transportation of LNG by rail tank car. The Pipeline and Hazardous Materials Safety Administration (PHMSA) must also address deficiencies in its published draft environmental statement and the special permit so that the public may make informed comment.

PHMSA is required by statute to provide this opportunity to first responders, environmental groups, and public citizens. Neither the special permit, nor the draft environmental statement, adhere to Congress' explicit instruction to provide the public with enough information to adequately consider the risks, provide suggestions, and make useful comment to assist the agency in its decision-making.¹

The requested special permit presents unique and substantial risk to the safety of the public and the environment. Should even one rail tank car get punctured, the results could be catastrophic. Due to LNG's cold temperature, if it were to spill near an ignition source, the evaporating gas can burn above the LNG pool, resulting in a pool fire that would spread as the LNG pool expanded away from its source; such a pool fire is intense, burning far more hotly and rapidly than crude oil or gasoline fires, and it cannot be extinguished. The risks of such an incident include thermal radiation. As PHMSA's own draft environmental statement acknowledges, a BLEVE² event is possible, which could impact individuals up

¹ See 49 USC 5117(b).

² A BLEVE, shorthand for a boiling liquid expanding vapor explosion—which the draft environmental statement says is possible even with a small breach of the container (possibly due to wall metal failure)—is an event where rapid depressurization occurs in the rail tank car, resulting in an extremely rapid boiling of the liquid, a release of a significant mass of vapor in microseconds to

to one mile away from the explosion.

The special permit is addressed to Energy Transport Solutions, LLC, but does not contain any information on the company's address, its principals, its known assets or route networks, or contact information. More information needs to be disclosed to the public on the routes and the safety record of the shipper. A Google search shows that the company shares an address with New Fortress Energy, a unit of Fortress Investment Group, who also owns Florida East Coast Railway.

If Energy Transport Solutions intends to run 100+ rail tank cars on the Florida East Coast Railway, PHMSA would be placing large swaths of people and critical infrastructure (hospitals, schools, highways, and even the President's Mar-a-Lago resort) in jeopardy.

When Congress authorized the Secretary of Transportation to issue a special permit to allow a person to deviate from hazardous materials regulations, it put in place specific statutory requirements. The statute requires that, "[w]hen applying for a special permit or renewal of a special permit under this section, the person must provide an analysis prescribed by the Secretary that justifies the special permit. The Secretary shall publish in the Federal Register notice that an application for a new special permit or modification to an existing special permit has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application."³

PHMSA has incorporated a similar requirement in its regulations, which require that in order for any special permit to be issued, the applicant must provide: information describing all relevant shipping and incident experience; a statement identifying any increased risk to safety or property that may result if the special permit is granted; and either (i) substantiation, with applicable analyses, data, or test results (e.g., failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or (ii) an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for.⁴

The deficiencies in the public filings to date suggest that the special permit was arbitrarily rushed in a way that shortchanged PHMSA's normal review procedures. Specifically, PHMSA seems to have more questions than answers, admitting that, "the risk of puncture [of a tank car of LNG] increases with speed; but there are no test data or computer models that could be used to predict the probability of puncture at any particular speed..." and, "no test data or mathematical models exist to predict whether and when a LNG tank car exposed to an external fire would undergo a BLEVE." These statements, and many others, suggest that the statute and regulations requiring analysis and data to justify an equivalent level of safety have not been complied with. PHMSA states that "incident data with (non-LNG) hazard materials may suggest that incidents involving rail tank cars can lead to a larger area of consequence as compared to hazard areas arising from incidents involving MC-338s cargo tank motor vehicles." This is troublesome because the MC-338 cargo tank, which PHMSA acknowledges is likely safer, is the only alternative considered by PHMSA.

milliseconds, and a very high pressure explosion. Despite this risk of a high-pressured explosion occurring in milliseconds, the Department's draft environmental statement does not even examine the possibility of a cascading failure that would result in damage to more than one tank car, merely noting that this scenario is unlikely to occur.

³ 49 USC 5117(b).

⁴ 49 C.F.R. § 170.105(d).

There are also concerns that PHMSA did not adequately consider the risks associated with the tank car proposed in the special permit to transport LNG—the DOT-113. Since 2011, there have been two accidents that have led to a breach of both the outer and inner tanks of a DOT-113 tank car. In May 2011, an accident in Moran, Kansas damaged three tank cars containing liquid ethylene, leading to a fire. In October 2014, a DOT-113 tank car carrying argon under a special permit experienced an outer and inner tank car breach. PHMSA notes that there is little that first responders can do if a cryogenic liquid rail tank car is breached.⁵ PHMSA’s draft environmental statement acknowledges that, the average quantity spilled per derailment involving the cryogenic liquids carried in DOT-113 tank cars (45,769 gallons) is approximately ten times greater than the average quantity spilled for all rail incidents involving hazardous materials (4,807 gallons) for the period of 2005 to 2017.

Finally, the special permit does not take into consideration any operating conditions that could be placed on the special permit to ensure its safety. The Federal Railroad Administration (FRA) has authorized the transportation of LNG by rail in intermodal containers in rare instances, but in each case has undertaken a comprehensive safety analysis and imposed rigorous operating conditions.⁶ In these limited instances, the FRA has required the approved operators to abide by speed restrictions, route restrictions, quantity limitations, mandatory crew minimums, mandatory LNG-specific crew training, mandatory LNG-specific training for first responders along the rail route, and FRA notification and reporting. None of these are specified in the special permit, despite the volume of LNG contemplated for transportation being significantly greater.

Introducing this level of risk to the rail network, the public, and the environment is not typically achieved through special permit.⁷ Given the serious risks at play, it is critical that PHMSA be transparent and direct in this process and fully consider the risks they are posing by rushing this special permit when so many questions and concerns remain unaddressed.

Sincerely,



BRIAN HIGGINS
Member of Congress

⁵ The draft environmental statement says, “Response and mitigation techniques beyond evacuation for breaches in cryogenic tank cars do not exist or are impractical during a derailment scenario. Breach of a cryogenic tank car will result in the loss of the entire volume of material in the tank car. Incidents are rare, though rail impacts can be high-consequence, given the quantity of hazardous materials in transportation”

⁶ See 49 C.F.R. § 174.63

⁷ A review of PHMSA’s recently-issued special permits for hazardous materials transportation indicates that many of these authorize other Federal government entities to move shipments due to natural disasters or authorize private parties for one-time shipments or minor deviations from the hazardous materials regulations. None appear to introduce the same level of risk as this special permit.