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William S. Schoonover
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Material Safety Administration
U.S. Department of Transportation, East Building PHH-30
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: Notice of Proposed Rulemaking – Hazardous Materials:
Suspension of HMR Amendments Authorizing Transportation of
Liquefied Natural Gas by Rail, Docket No. PHMSA-2018-0025 (HM-264)**

Dear Associate Administrator Schoonover:

The Attorneys General of Maryland, New York, Connecticut, Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia (“States”), submit these comments in support of the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA” or “the agency”) proposal to suspend authorization of the bulk transport of refrigerated liquid methane, more commonly known as liquefied natural gas (“LNG”) nationwide by rail in new specification DOT–113C120W9 tank cars (the “Suspension Rule”)¹, as previously authorized by PHMSA in a final rule published in July 2020 (the “2020 LNG by Rail Rule” or the “2020 Rule”).²

Many of the States joined comments to PHMSA in January 2020 as the agency was considering authorizing the bulk transportation of LNG in rail tank cars without any operational controls. The States opposed the proposal because PHMSA lacked sufficient safety studies or an adequate analysis of environmental and climate impacts to support shipping LNG by rail. A copy of those multistate comments is attached as Appendix A.³

¹ Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, 86 Fed. Reg. 61,731 (Nov. 8, 2021) (Notice of Proposed Rulemaking).

² Hazardous Materials: Liquefied Natural Gas by Rail, 85 Fed. Reg. 44,994 (July 24, 2020).

³ The Proposed Suspension Rule recognizes that many of the States have also filed a petition for review of the 2020 LNG by Rail Rule in the U.S. Court of Appeals for the District of Columbia. 85 Fed. Reg. at 61,733; *see State of Maryland v. U.S. Department of Transportation*, Case No.: 20-1318 (D.C. Cir. filed Aug. 18, 2020). That petition

The States support adoption of the Suspension Rule as soon as practicable because: (1) the 2020 LNG by Rail Rule was based on a flawed and incomplete safety assessment; (2) the Final Environmental Assessment accompanying the 2020 LNG by Rail Rule did not adequately consider upstream and downstream effects on greenhouse gas emissions; and (3) PHMSA did not consider the impacts of the 2020 LNG by Rail Rule on environmental justice communities. Accordingly, while repeal of the 2020 Rule would be the most durable corrective action, the States support prompt suspension of those regulations in the meantime. The States look forward to evaluating PHMSA’s forthcoming “companion rulemaking that will consider changes to the conditions under which LNG could be moved by rail, to potentially include additional safety, environmental, and environmental justice protections.”⁴

I. Suspension of the 2020 LNG by Rail Rule is Appropriate Because it was Based on a Flawed and Incomplete Safety Assessment.

The Hazardous Materials Transportation Act requires that U.S. Department of Transportation regulations “protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.” 49 U.S.C. § 5101; *see also* Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A) (agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” should be held unlawful). Appendix B hereto contains maps of active rail lines within the States, illustrating the extent to which freight rail lines pass through or near heavily populated areas, thus heightening the States’ concerns about the safety risks of transporting LNG in bulk by rail.

The Notice of Proposed Rulemaking (NPRM) for the Suspension Rule explains that at the time that the 2020 LNG by Rail Rule was adopted, the agency lacked a sufficient safety record to determine whether LNG could be safely transported in rail tank cars. For example, the LNG Task Force (consisting of staff from PHMSA and the Federal Railroad Administration) had not completed critical safety assessments, many of which still are not complete: “several tasks—including full-scale impact testing, puncture and derailment simulation modeling, and LNG portable tank pool fire testing—are not expected to be completed until sometime in 2022.”⁵

The NPRM also explains that the Phase I study of a congressionally-funded Transportation Research Board (Board) committee “identified a number of

seeks vacatur of the 2020 LNG by Rail Rule on the grounds that it violates the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 *et seq.*), the Administrative Procedure Act (5 U.S.C. §§ 553 *et seq.*), and the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*).

⁴ Proposed Rule, 86 Fed. Reg. at 61,740.

⁵ Proposed Rule, 86 Fed. Reg. at 61,733.

information gaps in its and the LNG Task Force’s work that PHMSA was not aware of when it issued the LNG by Rail final rule. The gaps concern testing and the evaluation of public safety and environmental risks (e.g., relating to full-scale impact testing, pool fire testing, worst-case analysis, and quantitative risk assessment)—including testing on which PHMSA had relied in the LNG by Rail final rule.”⁶ The Board “also emphasized the need for a robust understanding of the potential risks to public and worker safety arising from releases during loading, unloading, and transloading of LNG tank cars, and improved emergency planning and response training and resources, further underscoring the importance of PHMSA taking additional time to ensure it fully understands and considers uncertainties.”⁷

It is thus evident from the NPRM that the 2020 LNG by Rail Rule was not supported by a sufficiently complete and defensible safety assessment, as required under the Hazardous Materials Transportation Act and the APA. Suspension of the regulations authorizing LNG to be transported in rail tank cars is therefore appropriate at this time.

II. Suspension of the 2020 LNG by Rail Rule is also Appropriate Because PHMSA Failed to Adequately Assess the Rule’s Impact on Greenhouse Gas Emissions.

PHMSA is required by the National Environmental Policy Act (NEPA), to evaluate both the direct and indirect environmental consequences of a proposed action.⁸ The limited analysis included in the agency’s Final Environmental Assessment for the 2020 LNG by Rail Rule failed to rise to the standard required by NEPA and therefore provides independent grounds for suspending the rule. *See Vecinos Para el Bienestar de la Comunidad Costera v. Fed. Energy Reg. Comm’n*, 6 F.4th 1321, 1329-30 (D.C. Cir. 2021) (holding that FERC “failed to adequately analyze the impact of the [LNG] projects’ greenhouse gas emissions”).

The absence of such an analysis is particularly striking given the limited amount of time remaining to avoid the worst effects of climate change. The States agree with PHMSA that while the 2020 Rule touted “the potential for increased natural gas (methane) production as a potential *benefit* . . . more recent science has underscored the urgency of limiting such additional production for avoiding the worst consequences from anthropogenic climate change from indirect emissions

⁶ Proposed Rule, 86 Fed. Reg. at 61,735; National Academies of Sciences, Engineering and Medicine, Preparing for LNG by Rail Tank Car: A Review of a U.S. DOT Safety Research, Testing, and Analysis Initiative (Jun 15, 2021) (Phase I Report), at 5-6, <https://www.nap.edu/read/26221/chapter/1>.

⁷ *Id.*

⁸ *See* 42 U.S.C. §§ 4321 et seq. The NPRM is correct to rely on 2016 Guidance from the Council on Environmental Quality concerning the distinction between “direct” and “indirect” greenhouse gas emissions. NPRM, 86 Fed. Reg. at 61,732 n.1.

associated with production and transportation activity.”⁹ The costs and benefits of allowing LNG by Rail must be evaluated within this increasingly dire context but the 2020 Final Rule utterly failed to engage in such an analysis.

Rather, the 2020 LNG by Rail Rule narrowly focused its environmental review on a direct comparison between transporting LNG by rail instead of by truck to conclude that the Final Rule would decrease emissions.¹⁰ That rested on an assumption that rail shipments of LNG would serve as a one-for-one replacement for trucks transporting the same quantity of LNG.¹¹ But such an assumption was both illogical and inconsistent with statements from PHMSA and the rule’s proponents that “authorizing the transport of LNG by tank car via rulemaking has the potential to allow shippers to move a greater quantity of LNG, which may stimulate more production and use of natural gas.”¹²

PHMSA now acknowledges as much in the NPRM: “it is possible that allowing LNG to be transported in rail tank cars would increase the amount of LNG transported, and therefore a direct comparison of the risks by rail and highway may be misleading.”¹³ The NPRM accordingly takes the view that an environmental analysis of allowing LNG shipment via rail tank cars must include a discussion of both direct and indirect greenhouse gas emissions.¹⁴ The States urge PHMSA to ensure that such an analysis accompanies the companion rulemaking. In the meantime, the absence of such an analysis provides further reason to suspend the 2020 Final Rule.

III. Suspension is Independently Warranted to Allow PHMSA to Consider the Effects of Allowing LNG By Rail on Low-Income, Minority, Underserved, and Disadvantaged Communities.

The States are encouraged by the NPRM’s commitment to analyzing the Suspension Rule’s impact on low-income, minority, underserved, and disadvantaged

⁹ Proposed Rule, 86 Fed. Reg. at 61,735 n.35.

¹⁰ Docket No. PHMSA-2018-0025 (HM-264); RIN 2137-AF40, Final Environmental Assessment and Finding of No Significant Impact at 56, available at <https://www.regulations.gov/document/PHMSA-2018-0025-0478> (“The movement of natural gas in its cryogenic form by rail is energy efficient and would significantly decrease the pollution and carbon emissions in comparison to highway transportation.”).

¹¹ *Id.* at 33-34.

¹² Docket No. PHMSA-2018-0025 (HM-264); RIN 2137-AF40, Hazardous Materials: Liquefied Natural Gas by Rail Final Rule, Final Regulatory Impact Analysis at 40 (July 23, 2020) available at <https://www.regulations.gov/document/PHMSA-2018-0025-0479> (Final RIA); *see also* Association of American Railroads (AAR) Petition, at 2 (“Authorizing transportation of LNG by rail likely will stimulate more interest.”); Proposed LNG by Rail Rule, 84 Fed. Reg. 56,964, 56,966 (Oct. 24, 2019) (PHMSA agreeing with AAR that the proposal will “enhance domestic energy production”); Preliminary Regulatory Impact Analysis, Docket No. PHMSA-2018-0025, RIN 2137-AF40 at 18 (Oct. 2019) (stating that the Proposed LNG by Rail Rule would “promot[e] domestic energy production and consumption”).

¹³ Proposed Rule, 86 Fed. Reg. at 61.741.

¹⁴ *See* Proposed Rule, 86 Fed. Reg. at 61,732 n.1.

communities pursuant to Executive Order (EO) 12,898, EO 13,985, and DOT Order 5610.2C. The NPRM correctly notes that “insofar as the proposed [Hazardous Materials Regulations] amendments could avoid the release of hazardous materials, the proposed rule could reduce risks to populations and communities – including any minority, low-income, underserved, and disadvantaged populations and communities – in the vicinity of railroad lines.”¹⁵ The States strongly support this analysis and urge PHMSA to commit to assessing the impacts on such communities when it conducts its companion rulemaking. Doing so would remedy a significant flaw with the 2020 Rule.

The 2020 Rule failed to assess the inequitable burdens of allowing bulk shipment of LNG by rail and acknowledged the possibility of disproportionate impacts only to dismiss such concerns.¹⁶ But the fact that “PHMSA and FRA have no authority over siting or construction of rail infrastructure” does not excuse the agency from determining whether authorizing LNG by Rail nationwide will impose a disproportionate burden on historically overburdened and underserved communities.¹⁷ Likewise, PHMSA is not excused from considering this important aspect of the issue just because it does not presently “have the necessary data and information with which to conduct such a specific analysis,” as it stated in the Final RIA accompanying the 2020 Rule.¹⁸

This data could be assembled by the agency using existing tools, such as the U.S. Environmental Protection Agency’s EJ Screen, census data, and rail route maps. The States urge PHMSA to fill any data gaps that currently stand in the way of assessing such risks, and to ensure that the companion rulemaking includes a detailed analysis of how authorizing bulk shipments of LNG by rail tank car would disproportionately impact burdened communities.

Conclusion

The States urge PHMSA to adopt the Suspension Rule as soon as possible, and to rigorously consider the States’ concerns regarding safety, environmental and climate impacts, and environmental justice in developing any further rulemaking pertaining to LNG transportation by rail.¹⁹

¹⁵ Proposed Rule, 86 Fed. Reg. at 61,742.

¹⁶ See Final RIA at 42.

¹⁷ See *id.*

¹⁸ *Id.*

¹⁹ The States also urge PHMSA and FRA to ensure that the review of any special permit applications to transport LNG by rail pursuant to 49 C.F.R. § 107.105 or special permit renewal requests pursuant to 49 C.F.R. § 107.109 that have been received or that may be issued prior to the completion of the companion rulemaking address these same safety, environmental/climate, and equity concerns.

Respectfully Submitted,

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