



VIA ELECTRONIC FILING

January 27, 2023

Federal Energy Regulatory Commission
Secretary of the Commission
888 First Street NE
Washington, DC 20426

Re: Agency/Docket Number: RM22-8-000, Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards

To Whom It May Concern:

On the November 28, 2022, the Federal Energy Regulatory Commission (Commission or FERC) published in the Federal Register,¹ a proposal to revise its regulations governing liquefied natural gas (LNG) facilities subject to sections 3 and 7 of the Natural Gas Act (NGA) by removing outdated references for seismic hazard evaluations and seismic design criteria for LNG facilities. In their place, the Commission proposes to codify its existing practice of evaluating seismic and other natural hazards and design criteria for LNG facilities under its jurisdiction.

The Center for LNG² and the American Petroleum Institute³ (collectively, the Associations) applaud the Commission's efforts to prevent confusion about the informational requirements that

¹ 87 FR 72906.

² The Center for LNG (CLNG) champions public policies that advance the production of LNG in the U.S., increase international exports, and help power a clean energy future. CLNG represents LNG producers, shippers, and multinational developers in the U.S. It also serves as a resource for educational and technical information to help policymakers fully realize the potential of LNG to meet the world's energy needs while reducing emissions, and supporting domestic economic growth.

³ API represents all segments of America's natural gas and oil industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our nearly 600 members produce, process and distribute the majority of the nation's energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

the Commission applies to its review of applications for the construction and operation of LNG facilities. To accomplish that goal, the Commission should include in the final rule additional clarification of references, definitions, and applicability of requirements to reduce uncertainty and avoid confusion. In keeping with the U.S. Governmental Accountability Office finding to replace an outdated reference, Office of Management and Budget (OMB) Revised Circular A-119, and the National Technology Transfer and Advancement Act of 1995, the Commission should preferentially identify an appropriate industry consensus standard instead of adding internally produced FERC guidance into regulation, thereby creating an additional federal safety standard with respect to natural hazards. Additionally, we believe the Commission should use the incorporation by reference (IBR) process outlined in 1 C.F.R. Part 51 when including codes and standards into its regulations, which would comply with existing regulation and allow for industry and public input on the applicability of the proposed standards to be incorporated by reference.

The Commission should clarify the following requirements included in the proposed rule.

- The proposed modification to 18 C.F.R. Part 380 introduces undefined terms and is inconsistent in terminology. The proposed rule uses the following terminology without definition and inconsistently:
 - Structures, systems and components;
 - Associated safety related structures, systems and components;
 - Applicable codes and standards;
 - Generally accepted codes, standards, and specifications;

The Commission should consider a regulatory proposal that includes definitions of undefined terms and phrases introduced in the proposed rule. The use of consistently defined terms in the final rule would help to provide clarity and prevent confusion.

- The proposed rule includes multiple terms for codes and standards that could create confusion for regulated industry. At places the rule requires a listing of “codes and standards incorporated by reference into federal regulations” (§ 380.12(o)(14)) and at others it requires “applicable codes and standards” (§ 380.12(o)(15)(i)(B)) and “generally accepted codes, standards, and specifications” (§ 380.12(o)(15)(iii)(B)(1)). Generally, codes and standards IBR in federal regulations may not be the most current version of those codes and standards, which is evidenced by one of the purposes of this rulemaking in updating the seismic design criteria. The potential inclusion of codes and standards not incorporated by reference could create conflict between what the Commission expects of the regulated community and the codes and standards IBR in federal regulations that carry the force of law. The Commission should clarify what is meant by “applicable codes and standards,” determine what versions are the most protective of the public, and follow the requirements of 1 CFR Part 51 to IBR these selections to reduce confusion and uncertainty in the regulated community.

- The proposed rule states in various places (PP 33, 39, 40, 47, 48 & 54) that the proposed modifications would only affect entities filing new applications to site, construct, operate, or expand an LNG facility pursuant to Section 3 or 7 on the NGA. The Commission should codify the effective dates of regulation in the final regulatory text. The Commission should clarify that it will not retroactively apply updated or modified codes and standards to existing facilities. If not clarified, as currently written, industry is concerned that an existing operator who files an application or other request with the Commission to modify operations, expand, or add additional equipment, could be required to upgrade or retrofit the existing facility to current codes and standards, which cannot be the intent of the Commission’s rule. In the case of existing facilities sited, constructed, and operated under existing Commission approvals, the application of newer codes and standards may be contrary with lender obligations, prohibitively expensive, or impossible.
- We encourage the Commission to consider other Federal Agencies’ approaches in clarifying applicability of regulations, such as the Environmental Protection Agency, and include an applicability section in 18 C.F.R. Parts 153, 157, and 380 to clearly define applicability requirements and clarify that the new changes do not apply to existing facilities that were permitted before the effective date of the new rule. Any new rule should not be broadly interpreted to require retrofit or modification of those previously approved facilities or operations simply by virtue of those facilities being integrated with a filing to amend or expand or modify the same complex to add new facilities.
- The proposed rule states that the regulatory burden is unchanged; however, the NOPR indicates that FERC incorporated the burden of following guidance with the pre-existing regulatory burden to achieve a “no change” assessment. A more meaningful regulatory burden assessment would only consider what was previously required in regulation against the proposed regulatory requirements. In addition, the proposed regulatory wording would, in at least one case, introduce additional specific regulatory requirements that do not appear to be assessed. The proposed regulation, in 380.12(o)(15)(iii)(A)(22) contains “including a minimum of one triaxial ground motion recorder installed to register the free-field ground motion and additional triaxial ground motion recorders on each LNG tank system foundation, LNG tank roof, and associated safety related structure, systems, and components.” It is unclear what “associated safety related structures, systems, and components” entails and how many ground motion recorders may be required. This new requirement also does not appear to take into consideration the information in applicable codes and standards such as ACI 376-11, that indicates accelerometers are not required for LNG tanks with SSE peak ground accelerations less than .1g, which would introduce additional regulatory burden to install additional

accelerometers on all tanks and associated systems, structures, and components regardless of specific ground acceleration conditions. The Commission should not include this new and unassessed triaxial ground motion recorder requirement in the final rule.

- Incorporation of guidance into regulation eliminates the option of alternate approaches as referenced in FERC’s 2017 Guidance Manual for Environmental Report Preparation, and also the qualifying statement in NBSIR-84-2833, which states, “However, if an applicant believes that the particular seismology and geology of a site indicate that some of the information identified in this report need not be provided, that information should be identified in the application, and supporting rationale or data to justify clearly such departures should be presented.” If the proposed regulation is placed into effect, this appropriate flexibility and performance based approach will be lost, as FERC regulations do not currently offer a process for alternate approaches to legal regulatory requirements, such as the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Special Permit process, where an alternate approach that demonstrates equivalent or greater safety can be approved. We further note that even if a similar process existed, execution of such a process would likely cause additional delays in the application process.

FERC should carefully evaluate the impact and burden on regulated industry when promulgating additional and potentially conflicting layers of siting regulations. The introduction of specific FERC regulatory requirements related to meeting the requirements of DOT regulations in 49 C.F.R. Part 193, and by IBR, NFPA-59A-2001 further promulgates an additional layer regulatory overlap and complexity for operators.

We appreciate your consideration of these comments.

Sincerely,



Charlie Riedl
Executive Director
Center for LNG



David Murk
Senior Director of Pipelines
American Petroleum Institute