

Congress of the United States
Washington, DC 20515

October 25, 2023

Deputy Administrator Tristan Brown
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Deputy Administrator Brown:

We write to express concerns with the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) final rule suspending the authorization to transport liquefied natural gas (“LNG”) by rail tank car (“LNG by rail rule”).¹ This suspension, which is the latest attack in the Biden administration’s war on American energy, calls into question PHMSA’s commitment to its safety mission, PHMSA’s role in promoting the administration’s extreme green policies, and whether PHMSA will ever reasonably allow for the movement of LNG by rail. We ask you to reverse this misstep or, at a minimum, ensure rules going forward focus on PHMSA’s safety mission and strongly consider cost-benefit analysis.

PHMSA Must Focus on Safety, Including Evidence that LNG Can Move Safely by Rail

PHMSA is a safety agency, not an environmental agency, and is responsible for regulating the safe transportation of hazardous materials.² Given its safety mission, the question PHMSA must consider is not whether LNG can be moved safely in tank cars by rail, but rather what restrictions are reasonable and justified? After all, Transport Canada authorizes LNG transportation by rail tank car,³ and LNG has “been transported by marine vessel and truck for decades.”⁴

When issuing the LNG by rail rule in 2020, PHMSA leveraged the experience of safely moving many flammable commodities by rail and moving LNG by other modes. Shippers have safely offered, and carriers have safely transported, other flammable cryogenic liquids in similar tank cars for years without fatalities or serious injuries.⁵ The LNG by rail rule already prioritizes safety by requiring a new and especially safe tank car design, the DOT-113C120W9 (“LNG tank car”). This car is “enhanced with an outer tank that is thicker and made of steel with a greater puncture resistance to provide an added measure of safety and crashworthiness.”⁶ From a safety perspective, it is absurd to remove these rail tank cars as an approved alternative to shipments of

¹ 88 Fed. Reg. 60356 (Sept. 1, 2023).

² 49 U.S.C. § 108(b).

³ Containers for Transport of Dangerous Goods by Rail, Section 8.6.3.4, Transport Canada, <https://tc.canada.ca/en/dangerous-goods/publications/containers-transport-dangerous-goods-rail-transport-canada-standard>.

⁴ National Academies of Sciences, Engineering, and Medicine, *Preparing for LNG by Rail Tank Car: A Readiness Review*, at vii (2022).

⁵ 85 Fed. Reg. 44994, 44996 (July 24, 2020).

⁶ *Id.*

LNG by truck. As PHMSA's own data shows, movement of hazardous materials by highway is inherently less safe for the public.⁷

In comments on the suspension proposal, twenty-five State Attorneys General raised serious concerns that PHMSA overstepped its authority by attempting to deter natural gas extraction, production, or consumption.⁸ In justifying the suspension when issued, PHMSA doubles-down on supposed environmental concerns, rather than safety issues, by articulating the “proposition that new oil and gas production activity . . . could be a reasonably foreseeable consequence of authorizing new takeaway capacity [a]s consistent with its obligations under [the National Environmental Policy Act].”⁹ By this reasoning, it seems PHMSA would always oppose LNG by rail in an *ultra vires* effort to deter oil and gas production, even in the companion safety rulemaking (RIN 2137-AF24)¹⁰ and no matter how “thorough” the safety protections in any relevant Hazardous Materials Regulations (“HMR”).¹¹ In sum, PHMSA is improperly embracing green activism over its safety mandate and seems intent on continuing to do so.

The Biden Administration Intentionally Deters Investment in American Energy

PHMSA's suspension of the LNG by rail rule is part of a larger attack on domestic fossil fuel production that willfully ignores the attendant harms to consumers and national security.¹² This effort comes from the highest level of the administration, as President Biden specifically targeted PHMSA's LNG by rail rule through an alarmist, anti-fossil fuel executive order purporting “to Tackle the Climate Crisis.”¹³ After President Biden explicitly targeted the LNG by rail rule, PHMSA issued a proposal to suspend the LNG by rail rule later that year.¹⁴

⁷ DOT, PHMSA, *Incident Statistics*, (last updated May 27, 2023), <https://www.phmsa.dot.gov/hazmat-program-management-data-and-statistics/data-operations/incident-statistics>.

⁸ Attorney General Jeff Landry et al., Comment Letter on Proposed Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail (Feb. 28, 2022), at 8-9, <https://www.regulations.gov/comment/PHMSA-2021-0058-7063>. See also similar concerns raised by members of the House of Representatives, Committee on Transportation and Infrastructure, Comment Letter on Proposed Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail (Dec. 22, 2021), <https://www.regulations.gov/comment/PHMSA-2021-0058-6364>.

⁹ 88 Fed. Reg. at 60365.

¹⁰ DOT, PHMSA, *Hazardous Materials: Improving the Safety of Transporting Liquefied Natural Gas*, (Apr. 2022), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2137-AF54>.

¹¹ 88 Fed. Reg. at 60357.

¹² See, e.g., Letter from Sens. Cruz et al. to Ann Carlson, National Highway Traffic Safety Administration (May 1, 2023), <https://www.commerce.senate.gov/services/files/17CBD607-0308-4D2C-AE5B-3167F0FFCF82> (requesting the agency refrain from imposing radical, unlawful fuel economy standards); Letter from Sen. Cruz to Alexander Hoehn-Saric, U.S. Consumer Product Safety Commission (Jan. 25, 2023), https://www.cruz.senate.gov/imo/media/doc/gas_stove_letter_to_cpse_chairman_hoehn-saric.pdf (expressing concern over efforts to ban gas stoves).

¹³ Exec. Order No. 13990 (Jan. 20, 2021); see also “Fact Sheet: List of Agency Actions for Review,” White House (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

¹⁴ 86 Fed. Reg. 61731 (Nov. 8, 2021).

Under this cloud of regulatory uncertainty, no one has committed to moving LNG by rail, which would include the major capital expense of a fleet of robust LNG tank cars. PHMSA ignores this context, noting only the “considerable uncertainty regarding whether any would occur in the time it takes for PHMSA to consider potential modifications to the existing, pertinent HMR requirements,”¹⁵ failing to recognize that this “considerable uncertainty” was created by the agency itself. Having suspended the LNG by rail rule and taken other actions targeting LNG, the Biden administration cannot now claim a lack of interest in transporting LNG by rail to justify its actions.

PHMSA also engages in questionable market analysis by downplaying the economics supporting the transportation of natural gas by rail after having placed its own thumb on the scale. It asserts with unjustified confidence that “domestic consumption of natural gas in the United States is expected to fall *in the next decade* due to increasing electrification driven by consumer preferences and Federal and State policy initiatives to reduce [greenhouse gas] emissions,” citing the Energy Information Administration (EIA) March 2023 annual energy outlook.¹⁶ PHMSA oddly cherry-picks that data point, however, as the same source cited in the EIA report shows any reduction in natural gas consumption reversing, with consumption thereafter increasing steadily.¹⁷ Indeed, the EIA report seems to be forecasting a temporary slump in American economic activity caused *by this administration*, with related reduction in energy consumption, followed by a recovery in both metrics. It is shameful for the Biden administration to rely on its own market interference and disruption to justify even greater market interference and disruption.

PHMSA Must Consider Reasonable Rules for Moving LNG by Rail, not Ban It on the Sly

The troubling rationale of the suspension of the LNG by rail rule suggests that its “temporary” nature is a mere smokescreen for intended permanent deterrence of American LNG that might rely on rail transportation. PHMSA uses the lack of recent LNG by rail investment to justify the suspension without recognizing that this lull has given PHMSA ample opportunity to evaluate the relevant safety requirements.¹⁸ And yet, PHMSA has made no progress on the companion safety rulemaking. Additionally, PHMSA declined to renew the last special permit it issued¹⁹ and proudly states that its suspension of LNG by rail “*guarantees* no such transportation will

¹⁵ *Id.* at 61732.

¹⁶ 88 Fed. Reg. at 60363 (emphasis added).

¹⁷ “Annual Energy Outlook,” Energy Information Administration (Mar. 2023), at 25, https://www.eia.gov/outlooks/aeo/pdf/AEO2023_Narrative.pdf.

¹⁸ Railway Supply Institute, Comment Letter on Proposed Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail (Dec. 23, 2021), at 4, <https://www.regulations.gov/comment/PHMSA-2021-0058-7047>.

¹⁹ PHMSA Denial of Application for Renewal of DOT-SP 20534, <https://www.phmsa.dot.gov/foia/phmsa-denial-application-renewal-dot-sp-20534>.

occur before its companion rulemaking has concluded or June 30, 2025.”²⁰ This is an arbitrary ban masquerading as a thoughtful pause.

Perversely, PHMSA’s participation in an all-out effort against American energy production works against the goal it purports to serve. PHMSA declares that the suspension “avoid[s] potential risks to public health and safety or environmental consequences (to include direct and indirect greenhouse gas (GHG) emissions).”²¹ In reality, the United States has led the world in reducing carbon emissions since peaking in 2007, largely because of America’s development and use of affordable and clean natural gas.²² Greater transportation of LNG by rail would give Americans an affordable and environmentally responsible option to meet their energy needs. Suspension of the LNG by rail rule is mere virtue signaling, not progress in reducing emissions.

Action Requested

The safe movement of LNG by rail would benefit the economy and national security. Given the importance of access to energy, PHMSA must reconsider its extremism towards LNG by rail. We look forward to your response committing to reverse the suspension of the LNG by rail rule. Alternatively, and at a minimum, please respond with commitments to:

- acknowledge the overall strength of the 2020 LNG by rail rule, including the specification for the LNG tank cars therein, in any future PHMSA regulations;
- focus PHMSA’s work on LNG by rail on the narrow recommendations for further study from the National Academy of Sciences, Engineering, and Medicine; and
- issue rules that are reasonable, supported by robust cost-benefit analysis, and give the regulated community much-needed certainty by authorizing the transportation of LNG by rail.

We request your responses to the above by November 8, 2023. Thank you for your prompt attention to this important matter.

Sincerely,



Ted Cruz
Ranking Member
Senate Committee on Commerce,
Science, and Transportation



Sam Graves
Chairman
House Committee on Transportation
and Infrastructure

²⁰ 88 Fed. Reg. at 60357 (emphasis added).

²¹ *Id.*

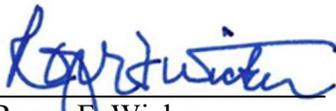
²² “U.S. Energy Related Carbon Dioxide Emissions, 2021,” Energy Information Administration (Dec. 14, 2022), <https://www.eia.gov/environment/emissions/carbon>.



Todd Young
Ranking Member
Subcommittee on Surface Transportation,
Maritime, Freight, and Ports



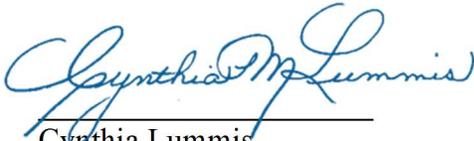
Troy E. Nehls
Chairman
Subcommittee on Railroads,
Pipelines, and Hazardous
Materials



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Dan Sullivan
United States Senator



Cynthia Lummis
United States Senator



Brian Babin, D.D.S.
Member of Congress



Aaron Bean
Member of Congress



Mike Bost
Member of Congress



Tim Burchett
Member of Congress



Eric A. "Rick" Crawford
Member of Congress



John S. Duarte
Member of Congress



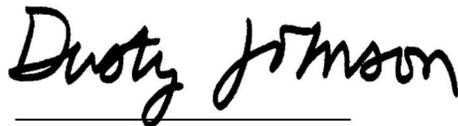
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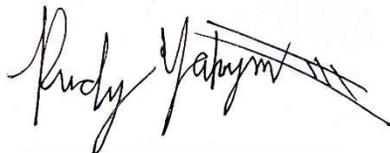
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