

I. PHMSA JURISDICTION: DEVELOPERS SKIRTING FEDERAL REGULATIONS

From Pivotal III.A.1: *“As the Commission explained in addressing its jurisdiction over Pivotal LNG’s facilities, safety concerns are subject to the jurisdiction of the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”).”*

Response: The U. S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) cannot perform the required safety analyses if PHMSA can be skirted by a developer.

Example: NFEnergia, San Juan Harbor. No review under CFR Title 49, Subpart B, Part 193 was performed by PHMSA prior to commencement of Operations and PHMSA had not issued an operational identifier (“OPID”) to this facility.

Timeline:

1. Facility came online in March, 2020.²

2. **Question** to PHMSA via email on July 28, 2020: “I presume that PHMSA has not performed the required analyses to satisfy CFR Title 49, Part 193, for this facility.”

Answer from PHMSA on July 29, 2020: “At this time, PHMSA has not performed a subpart B review.”

3. **Question** to PHMSA via email on July 26, 2020: “I am looking for the OPID number for an LNG handling facility that **NFEnergía, LLC (“NFE”)** constructed on an existing wharf in San Juan Harbor, Puerto Rico, but I can't seem to find the link to the National Registry of LNG Operators.”

Answer from PHMSA on July 28, 2020: “I have inquired and at this time, PHMSA does not have an OPID for an LNG handling facility under NFEnergia, LLC constructed in San Juan Harbor, Puerto Rico.”³

- **CFR Title 49, Subtitle B, Part 193, § 193.2051 Scope:**⁴ “Each LNG facility designed, constructed, replaced, relocated or significantly altered after March 31, 2000, must be provided with siting

² FERC’s expected jurisdiction claim over Puerto Rico LNG terminal could impact PREPA gas plant, renewables plans, Robert Walton, Utility Dive, March 16, 2021, <https://www.utilitydive.com/news/fercs-expected-jurisdiction-claim-over-puerto-rico-lng-terminal-could-imp/596749/>

³ PHMSA responses were provided via email from Meredith “Buddy” Secor, Engineering Operations Supervisor, Department of Transportation Pipeline & Hazardous Materials Safety Administration Office of Pipeline Safety, P(202) 366-2415, Email meredith.secor@dot.gov.

⁴ CFR [Title 49](#), Subtitle B, [Part 193](#), § 193.2051 Scope.
<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-D/part-193/subpart-B/section-193.2051>