



## GOVERNMENT OF PUERTO RICO

Puerto Rico Electric Power Authority

July 17, 2020

### BY ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: Order to Show Cause Directed to New Fortress Energy LLC, Docket No. CP20-466-000 – Comments and Statement of Support of the Puerto Rico Electric Power Authority**

Dear Secretary Bose:

On behalf of the Puerto Rico Electric Power Authority ("PREPA"), I write in response to the Order to Show Cause which the Commission issued to New Fortress Energy LLC ("New Fortress") on June 18, 2020 in Docket No. CP20-466-000. For the several reasons I set forth below, I urge the Commission to conclude that New Fortress had a legitimate basis for concluding that the liquified natural gas ("LNG") handling facility which its affiliate NFEnergía, LLC ("NFE") has constructed on an existing wharf in San Juan Harbor did not require this Commission's authorization under Section 3 of the Natural Gas Act. I also urge this Commission, if it chooses to assert jurisdiction over any portion of the NFE LNG handling facility, to do nothing to disrupt its ongoing operation, given the very substantial emissions reductions and cost savings the facility is enabling PREPA to achieve.

PREPA is the offtaker of natural gas delivered via the liquified natural gas handling facility which NFE has constructed in San Juan, adjacent to PREPA's San Juan Units 5 and 6, two combined cycle generating facilities which have been converted to consume natural gas as well as diesel fuel. Units 5 and 6 are now running on natural gas in place of diesel. Their ability to use this significantly cleaner fuel enables PREPA to reduce its reliance on other generating units that consume heavy fuel oil and produce significant emissions. PREPA therefore has a direct and substantial interest in the outcome of this proceeding.

In early 2019 PREPA entered into a Fuel Sale and Purchase Agreement with NFE under which NFE undertook to convert PREPA's San Juan Units 5 and 6 to dual-fuel capability, and to supply natural gas to fuel the facilities. The agreement obligates NFE to transport LNG to




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San Juan Harbor, where the LNG is transferred to a floating storage vessel docked opposite the San Juan Power Station. From that vessel, LNG is processed through vaporizers that deliver natural gas to Units 5 and 6. LNG will also be transferred via the NFE facility to onshore truck loading facilities for transportation of LNG to industrial and commercial consumers throughout Puerto Rico.

 The conversion of Units 5 and 6 and their use of natural gas in place of diesel will significantly reduce greenhouse gas, particulate and other air emissions from the San Juan Power Station. Units 5 and 6 are the newest and most efficient generating facilities in the PREPA fleet and, with natural gas now available, PREPA can take advantage of these efficiencies by running the units at higher capacity factors without exceeding air permit emissions limits. This is important, because the San Juan Power Station is located in the heart of the San Juan metropolitan area, the largest load center in Puerto Rico. PREPA's enhanced ability to run San Juan Units 5 and 6 will enhance the reliability of PREPA's system in the San Juan area and throughout the island. Consumption of natural gas in Units 5 and 6 should also yield significant fuel cost savings for Puerto Rico electricity consumers, since natural gas has historically been available at lower cost than diesel. PREPA has projected that its delivered fuel costs will decrease substantially with the ability to consume natural gas, even considering the costs NFE must incur to procure LNG from non-U.S. sources given the prohibition on bulk shipments of LNG from the U.S. mainland imposed by the Jones Act.


The Puerto Rico Energy Bureau has approved the PREPA-NFE contract as being in the public interest. The Financial Oversight and Management Board for Puerto Rico has approved the contract as being consistent with PREPA's certified Fiscal Plan. The United States Coast Guard has found that the waterways approaching San Juan Harbor and leading to the wharves where the NFE LNG storage vessel is docked are suitable for the transit of LNG, has established safety zones within the Harbor to accommodate LNG vessels, and has accepted NFE's security plans for its LNG receiving and transfer operations. The U.S. Environmental Protection Agency has recommended, and the Puerto Rico Environmental Quality Board has made, amendments to the permits governing air emissions from San Juan Units 5 and 6 that recognize the ability of those units to burn either natural gas or diesel. Now that natural gas is available to San Juan Units 5 and 6, PREPA will make the most significant reductions in air emissions it has ever been able to achieve. With the increased availability of San Juan Units 5 and 6, PREPA will be able to rely less on generating facilities consuming more polluting heavy fuel oil, and as a result will be well on the way to achieving compliance with the Clean Air Act's Mercury and Air Toxics Standard ("MATS").

On June 18, 2020, this Commission issued an "Order to Show Cause" directing New Fortress "to show cause why the liquified natural gas (LNG) handling facility it has constructed adjacent to the San Juan Combined Cycle Power Plant at the Port of San Juan in Puerto Rico is not subject to the Commission's jurisdiction under section 3 of the Natural Gas Act (NGA)." The order suggests that NFE's facilities may meet criteria that would make it subject to the Commission's Natural Gas Act jurisdiction. I note that the Order to Show Cause does not reach any final conclusions regarding the jurisdictional status of the NFE LNG handling facility and does not require the suspension of the NFE facility's operations.

PREPA is aware that NFE is responding to the Order to Show Cause with arguments why, given previous FERC decisions, the Commission should conclude that the San Juan LNG handling facility does not require NGA section 3 authorization. PREPA is familiar with these arguments, having discussed similar points with representatives of the Commission's Staff

nearly two years ago. PREPA urges the Commission to consider these arguments carefully before reaching any final determination in this proceeding.

PREPA conducted a competitive procurement in early 2018 through which it sought proposals for the conversion of San Juan Units 5 and 6 to dual-fuel capability. In response to a PREPA Request for Proposals, several project proponents submitted proposals, some of which contemplated the supply of natural gas derived from LNG. NFE submitted a proposal that relied on development of an LNG handling facility in and adjacent to San Juan Harbor. While consideration of the various conversion proposals was underway, PREPA representatives independently analyzed the question whether FERC authorization of an LNG handling facility that would supply natural gas to San Juan Units 5 and 6 was likely to be required. As part of this effort, I, the then-Chairman and a member of PREPA's Governing Board, PREPA's Chief Financial Advisor and PREPA counsel met on September 5, 2018 with ten representatives of this Commission's Staff to discuss alternative LNG receiving facility configurations that might be developed to serve PREPA generating facilities. We specifically discussed a facility configuration that would involve deliveries of LNG from a docked storage vessel via cryogenic hoses to a shoreside vaporizer located on an existing wharf in San Juan Harbor, with natural gas to be delivered from the vaporizer to San Juan Units 5 and 6 through power plant piping located entirely within San Juan Power Station property. We compared this configuration with the configurations of other LNG and compressed natural gas facilities over which the Commission had previously declined to assert jurisdiction under NGA section 3.<sup>1</sup>

 FERC Staff representatives observed that the fewer dedicated natural gas facilities there are, the less likely it was that FERC would assert jurisdiction over an LNG project. Staff representatives focused on the absence of a natural gas pipeline extending a substantial distance from the LNG vaporizers to a natural gas transmission or distribution system or to multiple end user facilities, suggesting that the absence of such facilities would make it less likely that the Commission would assert jurisdiction. They also deemed it significant that the proposed configuration involving a docked LNG storage vessel did not include a large onshore LNG storage tank. Staff representatives noted that the Commission does not assert jurisdiction over LNG vessels, although it has asserted jurisdiction over purpose-built pier or mooring facilities and related pipelines. They offered the view that the Commission would probably consider the San Juan Harbor "facilities light" configuration we described to be one over which FERC be unlikely to claim jurisdiction under NGA section 3.


Our meeting left us confident that, in FERC Staff's view, the configuration which NFE ultimately proposed made it like other LNG facilities which the Commission had concluded did not require its authorization under the Natural Gas Act. PREPA took comfort in the indications it received from FERC Staff, and we later concluded that NFE had a legitimate basis for concluding that the facilities configuration it proposed would not require NGA section 3 authorization. PREPA subsequently negotiated the terms of the NFE Fuel Sale and Purchase Agreement and obtained the approvals required to execute it. The Agreement was executed on March 5, 2019.

PREPA entered into the NFE Fuel Sale and Purchase Agreement on the assumption that FERC approval for the NFE LNG handling facility would not be required. It did so on the basis

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<sup>1</sup> Among the Commission decisions we discussed were *Shell US Gas & Power, LLC*, 148 FERC ¶ 61,163 (2014), *Emera CNG, LLC*, 148 FERC ¶ 61,219 (2014), *Pivotal LNG, Inc.*, 148 FERC ¶ 61,164 (2014), *Pivotal LNG, Inc.*, 151 FERC ¶ 61,006 (2015), and *The Gas Company, LLC*, 142 FERC ¶ 61,036 (2013).

of communications PREPA and NFE separately had at different times with senior members of the Commission's Staff that involved assessments of FERC precedents addressing what PREPA, NFE and the Commission's Staff all considered analogous LNG facilities configurations. I believe that it was reasonable for PREPA to move ahead with the San Juan Units 5 and 6 conversion project and for NFE to proceed with construction of the related LNG handling facility given the informal guidance PREPA and NFE separately received from FERC Staff and the analyses we independently conducted. I ask that you take this history into account in evaluating NFE's response to the Order to Show Cause and in considering what further action may be appropriate in this proceeding.



PREPA believes that the Commission should conclude that NFE did not require authorization under the Natural Gas Act to site, construct and operate any portion of its San Juan Harbor LNG handling facility. But the Order to Show Cause suggests that the Commission could come to a contrary conclusion, and as a result could require that NFE seek section 3 authorization. I have been advised that in other cases in which a natural gas project developer has been found to lack a required FERC authorization, FERC has not required the developer to cease or suspend operations while the required authorization is sought. Nevertheless, I wish to address the possibility that the Commission may consider directing NFE to cease operation of its San Juan LNG handling facility pending its receipt of authorization under the Natural Gas Act.

As I have stated, San Juan Units 5 and 6 are now running on natural gas. As a direct result, the Units' greenhouse gas emissions have been substantially reduced, as have their emissions of particulates. These emissions reductions are particularly significant given PREPA's longstanding inability to achieve MATS compliance. Given these emissions reductions and the expectation that natural gas will be available to the Units at lower cost than diesel, the NFE fuel supply arrangement will enable PREPA to run Units 5 and 6 at a higher capacity factor than they have historically. This is significant, because Units 5 and 6 are critically important as sources of local generation in the San Juan metropolitan area. By enabling San Juan Units 5 and 6 to be dispatched more of the time, the availability of natural gas supplied by NFE has enhanced the reliability and resiliency of PREPA's still-vulnerable transmission system.

Air emissions permits governing San Juan Units 5 and 6 have recently been amended to recognize the ability of those units to burn either natural gas or diesel. These permits establish annual emissions limits for each air pollutant regulated under the U.S. Environmental Protection Agency's New Source Review program. There are no restrictions in the hours of operation for Units 5 and 6 as long as the Units comply with the annual emissions limits established for each pollutant. That is, PREPA is obligated to manage actual emissions from Units 5 and 6 so that their combined emissions remain below the annual limits on a 365-day rolling basis, on a per regulated pollutant basis, and at any time during the initial 364 days. PREPA can make maximum use of San Juan Units 5 and 6, given the controlling annual emissions limits and the greater emissions that result from the combustion of diesel fuel, only if natural gas continues to be available.

If NFE were to be directed to cease operation of its LNG handling facility, PREPA would no longer have ability to consume natural gas in Units 5 and 6. As a consequence, PREPA would need to reduce its dispatch of these units on diesel to ensure that their emissions remain below the applicable annual limits. We are now entering hurricane season, and PREPA must be able to rely on San Juan Units 5 and 6 to maintain service to the San Juan region and beyond if PREPA's transmission system again were to sustain hurricane-related

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damage. Moreover, given the impacts of this winter's earthquake activity on PREPA's Costa Sur generating facility, two of PREPA's largest generating units remain unavailable, and will not be fully available until the end of this year. This makes the continued availability of San Juan Units 5 and 6 even more critical. It is, therefore, absolutely essential that NFE be permitted to continue to supply PREPA with natural gas for use in San Juan Units 5 and 6 during the period in which this Commission considers NFE's response to the Order to Show Cause, and during any subsequent proceeding on an NFE application for Commission authorization under the Natural Gas Act, should the Commission require it.

Thank you for your consideration. PREPA stands ready to provide any additional information the Commission may require.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Ortiz', with a stylized flourish extending to the right.

José F. Ortiz Vázquez  
Chief Executive Officer  
Puerto Rico Electric Power Authority

cc: Neil Chatterjee, Chairman, Federal Energy Regulatory Commission  
Richard Glick, Commissioner  
Bernard L. McNamee, Commissioner  
James Danly, Commissioner  
Official Service List, Docket No. CP20-466-000  
New Fortress Energy LLC