



August 17, 2023

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VIA E-MAIL

**Re: United States Army Corps of Engineers (USACE) Multiple Award Task  
Order Contract (MATOC) for Puerto Rico Power System Stabilization,  
Power Generation Services**

Dear Mr. Connor, Mr. Warrington, Mr. Alicea, Mr. Dawson, and Mr. McKee,

We are writing to detail several fatal legal and policy flaws with the United States Army Corps of Engineers' ("USACE") and the Federal Emergency Management Agency's ("FEMA") scheme to spend more than \$5 billion of FEMA disaster funding on gas-fired modular power plants across Puerto Rico. From the scant information provided to the public, we understand that the agencies plan, or already have put in place:

- \$508 million for 150 MW of "temporary" generation at Palo Seco, through USACE's Omaha office.
- 200 MW of "temporary" generation at San Juan



- A \$5 billion 5-year Multiple Award Task Order Contract<sup>1</sup> for the installation of dual fuel land-based temporary generation units and associated equipment, recently [solicited](#) by the USACE Savannah office.

These dirty and dangerous units are a terrible idea because they would prop up the current unaffordable, unreliable, and non-resilient grid instead of investing in the only option that can make energy affordable, reliable and resilient: rooftop solar +storage. Gas-fired units have failed Puerto Rico when they were most needed, and they will fail again after the next storm. Lt. Russel L. Honoré (Ret.), who led Joint Task Force Katrina, says "FEMA [is] taking the wrong approach in Puerto Rico."<sup>2</sup> Lt. Honoré says: "FEMA appears to be setting Puerto Ricans up to lose power and suffer needlessly during the next hurricane by approving fossil fuel plants and long-range transmission lines instead of ramping up rooftop solar and storage." This temporary generation scheme will not deliver the reliable and resilient energy Puerto Rico needs, and it is also vulnerable to legal challenge.

Agencies have likely violated multiple laws in their rush job to get these gas units up and running. By failing to conduct the necessary environmental review and public process, which would likely show why solar and storage are better options than the agencies' plans, the agencies have violated the National Environmental Policy Act ("NEPA"). The plans also violate the Clean Air Act since the agencies have not obtained the appropriate permits for these new pollution sources, nor provided the transparency and opportunities for public review that law calls for. Finally, the plans are directly contrary to Puerto Rico's Integrated Resource Plan and are inconsistent with Puerto Rico's Act 17 and Executive Order No. 14,008. We urge USACE and FEMA to cancel, or at least halt, these plans before wasting taxpayer money and interfering with Puerto Rico's clean energy transition. We request a meeting to discuss these concerns further.

Context is critical for understanding the gravity of the flaws of this so-called temporary generation scheme. These plans are being promoted by fossil fuel interests, including New Fortress Energy, which has a strong financial interest in keeping Puerto Rico's electric grid as reliant on methane gas as possible. New Fortress Energy runs Puerto Rico's centralized fossil fuel generation units through its subsidiary, Genera PR, and also provides imported gas for the gas-fired units through its other subsidiary, NFEnergía. Though Genera PR claims that a lack of available generation requires temporary gas-fired units, its sister company NFEnergía stands to take billions of taxpayer dollars to fuel those temporary units..

This generation "emergency" reeks of manufactured crisis. New Fortress Energy's subsidiary claims these so-called temporary units are necessary to allow for repairs of other aging fossil fuel power plants. Meanwhile, New Fortress Energy's other subsidiary, NFEnergía, stands to collect billions in taxpayer dollars to fuel those "temporary" units.

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<sup>1</sup> System for Award Management, *Multiple Award Task Order Contract (MATOC) for Puerto Rico Power System Stabilization, Power Generation Services*, Published on May 31, 2023, available at <https://sam.gov/opp/8aa51a688b314a9db86b243d81be8bf8/view#history>.

<sup>2</sup> "FEMA Is Fumbling Its Response to Climate Disasters"; August 9, 2023, The Messenger. <https://themessenger.com/opinion/fema-is-fumbling-its-response-to-climate-disasters>



USACE and FEMA have failed to recognize this conflict of interest and have not properly evaluated whether major repairs are necessary or appropriate, given these plants' scheduled retirement dates in 2024 and 2025. Nor does it appear that USACE or FEMA have evaluated whether major outages for repairs could be scheduled for times of comparatively low electricity demand, reducing the need for supplemental generation. Currently, PREPA's 2023 Fiscal Plan indicates that several of the outages, including at the largest generating units at Costa Sur and Aguirre, are planned for the summer, when demand for electricity is higher.<sup>3</sup> Even if some level of repair of generation facilities is justified and some of those repairs – and associated outages – must take place in the summer, it is not clear that existing generation could not meet demand. On July 5, 2023, one of the hottest days of the year (and therefore the highest demand), Genera reported that Puerto Rico would easily meet the 2,457 MW of expected peak demand, with 343 MW of spinning reserve and 783 MW of operational reserve. And this is with a baseload plant (Costa Sur) and several peakers (Mayagüez, Dagüao, Jobos, Vega Baja, Yabucoa, Vieques, Culebra, and Aguirre) all at 0 MW.<sup>4</sup> USACE's and FEMA's utterly uncritical acceptance of a private gas conglomerate's demand for immediate, extensive gas generation, developed outside of regular and required procedures, renders these procurements highly vulnerable to legal challenge.

First, the agencies have failed to properly evaluate the environmental consequences of its planned actions, as required by the National Environmental Policy Act ("NEPA").<sup>5</sup> As detailed below, that law requires the agencies to take a "hard look" at the impacts these units will have on the health of surrounding communities and on the environment, to evaluate alternatives that would achieve the projects' goals while causing less environmental harm, and to engage in a public comment process that allows meaningful input from impacted communities. Contracts handed out before that full evaluation is complete would violate NEPA's basic requirements and be vulnerable to legal challenge.

Second, USACE describes the units as "portable" and "temporary," but the agency clearly plans to operate them as stationary sources, as they may remain in any given location for over a year and USACE retains the right to purchase the units at the end of the lease term. These qualities subject the generators to pre-construction and Title V permitting requirements for stationary sources under the Clean Air Act, which in many circumstances require public notice and an opportunity for review and comment. It appears that compliance with pre-construction mandates has been considered, if at all, as either nonessential or something to be dealt with after temporary generators are put in place.<sup>6</sup> This blatant disregard for Clean Air Act mandates likewise renders the temporary generation vulnerable to legal challenge.

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<sup>3</sup> See PREPA Fiscal Plan, Table 20: Revised & Updated Maintenance Schedule (As of May 2023), p.93.

<sup>4</sup> <https://genera-pr.com/data-tiempo-real> , observed on July 5, 2023.

<sup>5</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 330 (1989).<sup>6</sup> EPA, Federal Facility Compliance Agreement, Dkt. No. CAA-02-2023-1219 (Jan. 30, 2023).

<sup>6</sup> EPA, Federal Facility Compliance Agreement, Dkt. No. CAA-02-2023-1219 (Jan. 30, 2023).



Third, USACE and FEMA’s failure to critically evaluate the claimed urgent need for yet more gas generation is particularly misguided given the context of the clean energy transition that Puerto Rico is legally mandated to complete. In 2019, the government of Puerto Rico passed Act 17, which requires that Puerto Rico be powered by 100% renewable energy by 2050, and putting in place ambitious benchmarks for the intervening decades.<sup>7</sup> Puerto Rico is already woefully behind in meeting its renewable energy targets—in fiscal year 2022 Puerto Rico got only 3% of its energy from renewable sources<sup>8</sup>—and investing \$5 billion in more fossil fuel-based generation will only make it that much more difficult for the archipelago to meet its renewable goals, create the clean energy future that the people of Puerto Rico want, and keep the lights on.

Instead, the proposed temporary generation units would merely prop up the current unaffordable, **unreliable**, non-resilient grid. They will not provide true resiliency or long-term affordability for the residents of Puerto Rico, which can only be achieved through transformation to a grid powered by rooftop solar + storage. Half-measures like “temporary” fossil generation might advance the goals of fossil fuel interests to increase sales of gas and liquefied natural (fracked) gas (“LNG”)—but they will ultimately harm the Puerto Rican people more than they help.

Fourth, the agencies’ scheme also violates PREPA’s approved Integrated Resource Plan. In August 2020, the Puerto Rico Energy Bureau (“PREB”) issued a Final Resolution and Order in accordance with Law 17-2014 and Act 83 of May 2, 1941.<sup>9</sup> In that Order, the Energy Bureau specifically considered, and rejected, PREPA’s proposal for more gas-fired generation.<sup>10</sup> PREB also explicitly stated that any procurement process regarding generation assets must be fully compliant with the August 2020 IRP Order.<sup>11</sup> The agencies’ scheme is also directly contrary to PREB’s conclusion that new gas-fired generation was not the most economic option for Puerto Rico’s grid.<sup>12</sup> The scheme would violate the August 2020 PREB Order, and violate Puerto Rico law.

Finally, any use of federal funding to build non-economic fossil infrastructure also undermines President Biden’s January 27, 2021 Executive Order, Tackling the Climate

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Ley de Política Pública Energética de Puerto Rico, P.R. LEYES AN. tit. 22, ch. 34, §1141 et seq.

<sup>8</sup> See U.S. Energy Information Administration, *Puerto Rico Territory Energy Profile* [https://www.eia.gov/state/print.php?sid=RQ#:~:text=Puerto%20Rico%20Quick%20Facts&text=For%20ofiscal%20year%202022%20\(July.%2C%20and%20renewables%20generated%203%25](https://www.eia.gov/state/print.php?sid=RQ#:~:text=Puerto%20Rico%20Quick%20Facts&text=For%20ofiscal%20year%202022%20(July.%2C%20and%20renewables%20generated%203%25).

<sup>9</sup> Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, *Resolution and Order*, CEPR-AP-2018-0001, (Aug. 24, 2020) <https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>. [Hereinafter “PREB August 2020 IRP Order”].

<sup>10</sup> *Id.* at paras.643, 659, 879.

<sup>11</sup> *Id.* at para. 844: “PREPA must comply with the terms and conditions of applicable regulations when conducting any competitive procurement processes performed to comply with the provisions of this Final Resolution and Order. The Energy Bureau will exercise its powers to review and guarantee that PREPA undertakes a competitive procurement process which fully complies with the goals and objectives of the Modified Action Plan, this Final Resolution and Order and all applicable laws and regulations related to procurement processes. All competitive bidding processes shall conform to the objectives and directives set forth herein.”

<sup>12</sup> See, e.g., *Id.* at paras. 109 & 878



Crisis at Home and Abroad.<sup>13</sup> Sec. 209 of the order mandates federal agencies to identify and eliminate any fossil fuel subsidies by the end of Fiscal Year 2021. USACE and FEMA's scheme would violate this order by directly subsidizing fossil fuels. The Order further requires "a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; and delivers environmental justice." USACE's scheme is directly contrary to that requirement.

To sum up, the proposal runs afoul of numerous federal and Puerto Rico laws, and contracts handed out without legal compliance would be vulnerable to challenge.

**1. Neither USACE nor FEMA have conducted a legally required NEPA analysis**

NEPA requires federal agencies to prepare an Environmental Impact Statement ("EIS") for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C §4332(2)(C). There can be no question that a \$5 billion, five-year-long<sup>14</sup> project to build "temporary" fossil fuel-fired generating units constitutes a major federal action that will significantly affect the quality of the human environment, thus triggering the requirement for USACE to prepare an EIS. Agencies are required to "make diligent efforts" to involve the public in the NEPA process and solicit public feedback on environmental documents prepared pursuant to NEPA. 40 C.F.R. § 1506.6.

Nonetheless, as far as the undersigned groups have been able to determine, neither USACE nor FEMA, which is funding the project, have engaged in any environmental review for this project or provided the public with any opportunity to give input, in violation of NEPA.

*a. The agencies failed to undertake legally required consideration of reasonable alternatives.*

One particularly concerning aspect of the agencies failure to engage in a NEPA process for this project is that it means the agency has not taken NEPA's required "hard look" at reasonable alternatives that could achieve the project's purpose and goals in a less environmentally harmful way. 40 C.F.R. §§ 1501.9(e)(2), 1502.14.

Puerto Ricans have heartbreakingly learned far too many times that fossil fuels simply do not provide the reliable and resilient electricity they need. Time and again, when climate change-fueled storms batter the archipelago, the fossil fuel-based grid fails, leaving millions of Puerto Ricans in the dark, sometimes for months at a time. These blackouts are deadly—people die when they do not have clean water, cannot refrigerate food and essential medicines, cannot run lifesaving medical equipment, and cannot

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<sup>13</sup> Exec. Order No. 14,008, 86 FR 7619 (Jan. 27, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

<sup>14</sup> "The purpose of this acquisition is to establish a MATOC with a shared capacity of \$5 billion, with a five-year ordering period..." <https://sam.gov/opp/8aa51a688b314a9db86b243d81be8bf8/view#history>.



access essential services like hospitals or firefighting. Centralized gas-fired units failed then, and they will fail again after the next storm.

Furthermore, LNG-powered generation is a particularly poor choice for any kind of “emergency” generation USACE says this project will fund. Indeed, a 2014 FEMA [guidance](#) on best practices for improving reliability of emergency power systems warns against relying on natural gas during emergencies, noting that “[n]atural gas supplies can be interrupted during high-wind, flood, or earthquake events. Also, natural gas services are often intentionally shut down prior to a storm event to reduce the risk of fires and explosions. Because of this, natural gas should not be used as a fuel for providing emergency power to critical facilities.” It concludes that, because natural gas is a “[fuel] source that may be interrupted, the fuel source is not considered reliable.”<sup>15</sup>

Puerto Rico’s experience after Hurricane Maria is a case in point. According to the Puerto Rico Department of Housing, a key concern with fossil fuels—including gas—is that they “must be transported by truck; following Hurricane María, many roads were impassable, and it was impossible to get fuel to generation stations and some communities.”<sup>16</sup> Consistent with that experience, that Puerto Rico government agency has rejected LNG as a reliable fuel:

A plan to switch from petroleum to LNG as an interim measure before investing in renewables would require significant investment in LNG receiving terminals and conversion of existing power generators. It would not solve the problem of Puerto Rico’s energy dependence, nor the problem of transporting fuels by truck when roads are down. This also conflicts with Puerto Rico’s Climate Change Mitigation, Adaption, and Resiliency Law (citation omitted) or the Puerto Rico Energy Public Policy Act—which call for Puerto Rico’s power system to be broken up into microgrids that run on increasing levels of renewable energy.

This also does not solve the problem of rising prices which already comprise sixty percent (60%) of PREPA’s operating cost and cause Puerto Rico to pay higher fuel prices than the other forty-eight (48) states.<sup>17</sup>

By contrast, distributed renewable energy resources, particularly rooftop solar, community solar and solar microgrids, especially when paired with storage, offer reliable and resilient electricity. Studies have repeatedly demonstrated the viability of these technologies as a solution in Puerto Rico. Most recently, the Department of Energy, along

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<sup>15</sup> Federal Emergency Management Agency, *Emergency Power Systems for Critical Facilities: A Best Practices Approach to Improving Reliability*, FEMA P-1019, at 5-8 (Sep. 2014).

<sup>16</sup> PRDOH CDBG-MIT Action Plan Amendment 2 (Substantial) HUD-approved on June 13, 2023, at 123, available at [https://cdbg-dr.pr.gov/en/download/cdbg-mit-action-plan-amendment-2-substantial-effective-on-june-13-2023/?wpdmdl=39470&refresh=64cd41c823a381691173320&ind=1686927748981&filename=ADM\\_PO\\_LI\\_CDBG-MIT%20APA2%20\(Substantial\)\\_EN\\_v1.pdf](https://cdbg-dr.pr.gov/en/download/cdbg-mit-action-plan-amendment-2-substantial-effective-on-june-13-2023/?wpdmdl=39470&refresh=64cd41c823a381691173320&ind=1686927748981&filename=ADM_PO_LI_CDBG-MIT%20APA2%20(Substantial)_EN_v1.pdf).

<sup>17</sup> *Id.* at 124.



with multiple national laboratories, is conducting the Puerto Rico Grid Resilience and Transitions to 100% Renewable Energy Study (the “PR100 Study”). The one-year progress report from that study concluded that Puerto Rico’s potential renewable energy resources *significantly* exceed the archipelago’s current and projected electricity demand through 2050.<sup>18</sup> That same report also found that all modeled scenarios for achieving Puerto Rico’s renewable energy targets require significant investment in rooftop solar and storage. *Id.* at 4.<sup>19</sup>

Puerto Ricans’ lived experience is consistent with these studies’ findings. When Hurricane Fiona hit the archipelago in the fall of 2022 and caused the grid to fail completely, homes and critical facilities like fire stations that had rooftop solar with storage were able to keep their lights on during and after the storm.<sup>20</sup> Similar stories have played out in other locations around the country, with a solar-powered community in Florida keeping the lights on during Hurricane Ian in 2022 amid widespread power outages,<sup>21</sup> and renewables and batteries playing a critical role in avoiding power outages in Texas during recent extreme heat waves.<sup>22</sup> By contrast, a “[n]ew analysis of California’s 2022 heat wave confirms gas plants failed to deliver promised power while toxic emissions soared in environmental justice communities.”<sup>23</sup>

Moreover, rooftop solar + storage is expanding rapidly in Puerto Rico – a fact that USACE and FEMA appear to have failed to take into account. Puerto Rico already has more than 700 MW of rooftop solar and 1000 MWh of rooftop storage online, with those figures doubling every eighteen months for solar and every year for storage.<sup>24</sup> Due in part to these new distributed resources, PREPA’s Fiscal Plan forecasts demand dropping by

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<sup>18</sup> PR 100, *One-Year Progress Summary Report* at 5 (Jan. 2023) (<https://www.nrel.gov/docs/fy23osti/85018.pdf>).

<sup>19</sup> Other studies have reached similar conclusions. For example, A 2021 study from the Institute for Energy Economics and Financial Analysis (“IEEFA”) and CAMBIO PR found that achieving 75% distributed renewable energy generation in 15 years is feasible with minimal upgrades to the distribution system, and would be less expensive than the base case of the current grid in Puerto Rico.

<https://ieefa.org/resources/we-want-sun-and-we-want-more#author>.

<sup>20</sup> Maria Galluci, *Solar is lifeline in Puerto Rico after Hurricane Fiona knocks out power*, Canary Media (Sept. 19, 2022) <https://www.canarymedia.com/articles/solar/solar-offers-lifeline-in-puerto-rico-after-fiona-knocks-out-power>

<sup>21</sup> Alejandra O’Connell-Domenech, *Solar-Powered community kept the lights on during Hurricane Ian*, The Hill (Oct. 12, 2022) <https://thehill.com/changing-america/sustainability/infrastructure/3685296-solar-powered-community-kept-the-lights-on-during-hurricane-ian/>

<sup>22</sup> Arielle Samuelson, *Show this to anyone who says renewables are unreliable*, Heated (June 29, 2023) <https://heated.world/p/show-this-to-anyone-who-says-renewables>

<sup>23</sup> California Environmental Justice Alliance, *The Regenerate California Coalition Examines California’s Underperforming Gas Plants* (<https://caleja.org/2023/06/regenerate-coalition-2023-heatwave-gas-plant-report/>).

<sup>24</sup> Expert Report of Agustín Irizarry-Rivera, Dkt. No. 17 BK 4780-LTS, Doc. #3414-1 (April 28, 2023), <https://document.epiq11.com/document/getdocumentsbydocket/?docketId=1000529&projectCode=PR1&docketNumber=3414&source=DM>



18% during the five-year timeframe of the MATOC, and by more than 60% by 2048.<sup>25</sup> Federal agencies like USACE and FEMA should contribute to this expansion, not hinder it.

For all these reasons, the agencies' failure to consider rooftop solar + storage, solar microgrids and/or community solar as an alternative to supply power means for creating a stable and resilient grid in Puerto Rico is both irresponsible and arbitrary, in violation of their obligations under NEPA, especially in light of the billions of dollars at issue. Puerto Rico's experience with Hurricane Fiona proved that the most resilient option is fully distributed storage, placed at or very near the site of energy use. The agencies must postpone any awarding or funding of contracts under the MATOC until they have completed an appropriate alternatives analysis that includes distributed solar and storage. Instead of spending \$5B on temporary fossil fuel generation, FEMA and USACE could use that money to install rooftop solar + storage systems on every low- and moderate-income household in Puerto Rico, providing those homes with affordable, reliable, resilient energy for decades.<sup>26</sup>

*b. The agencies failed to undertake legally required consideration of the proposed project's environmental impacts*

Because neither USACE nor FEMA has engaged in a NEPA process with respect to these projects, they have also failed to complete another core NEPA requirement, which is that an agency take a "hard look" at the environmental impacts of any major action it plans to take. 40 C.F.R. § 1502.16. The agencies are obligated to review the impacts of the proposed new polluting generation units on surrounding communities and ecosystems, in consultation with the Environmental Protection Agency and Puerto Rico Department of Natural and Environmental Resources. This analysis must include risks to human health and the environment from all stages of construction and operation of the project—including increased traffic of LNG carriers into the crowded San Juan harbor that would be needed to supply the generation units with fuel.

The construction and operation of these generating units will undoubtedly produce significant amounts of air and water pollution, as well as climate-harming greenhouse gas pollution, that will harm the residents of the communities where the units are sited, as well as sensitive ecosystems and habitats. The agencies have failed completely to engage in the critical and legally required process of evaluating the environmental harms that will result from this project.

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<sup>25</sup> 2023 Certified Fiscal Plan for the Puerto Rico Electric Power Authority, Exhibit 3322, "Net Load Forecast (TWh, FY2022 Actuals and FY2024-2050 Forecast". <https://ntc-prod-public-pdfs.s3.us-east-2.amazonaws.com/eVtTyFLQ2DBtKVd4UmJN9FcjOvw.pdf>.

<sup>26</sup> November 21, 2022 letter to Congress: "An allocation of \$5 billion in federal funds for rooftop solar and storage would help ensure that Puerto Rico's low income and vulnerable populations can remain in their homes, and everyday lives in Puerto Rico can continue because people can rely on their power source no matter whether the island is dealing with an extreme weather event or another issue impacting the grid's performance." <https://www.solarunitedneighbors.org/wp-content/uploads/2022/11/Essential-Business-Advocacy-Letter-Senate-and-House.pdf>





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*c. The agencies failed to allow for community engagement.*

Moreover, Executive Order 12898 of February 1994 requires the agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations. This requirement is especially important in this case, as the locations USACE proposes to place new polluting units are disproportionately in overburdened, low-income, minority communities. The D.C. Circuit Court of Appeals has recognized, in the context of applying Executive Order 12898, that “it is unjust to locate a polluting facility in a community that already has a high concentration of polluting facilities...”<sup>27</sup> The temporary generation scheme will have devastating impacts on Puerto Ricans and environmental justice communities. More than 20,000 Puerto Ricans live within a mile of the planned San Juan temporary units, more than 70,000 live within two miles, and upwards of 168,000 live within three miles.<sup>28</sup> Those Puerto Ricans would be impacted by pollution from daily operation of the “temporary” units. They would also live with the risks of a catastrophic explosion at these gas-fired units, exacerbated by the fact that the LNG Terminal fueling the “temporary” units is built over substrates at “very high” risk for liquefaction due to an earthquake.<sup>29</sup>

The residents and people who work just half a mile from the “temporary” units have not been made aware of these risks, and have not been able to take action or provide input on this scheme. The 1,646 residents of the adjacent Sabana community, the people operating food processing companies and warehouses of one of Puerto Rico’s principal food distributors, the people working at the nearby military installation, the people protecting the Ciénagas Las Cucharillas Natural Reserve, and the Metropolitan Detention Center which houses more than a thousand incarcerated persons, have all been put at risk by USACE’s and FEMA’s temporary generation scheme.

The first step USACE should take is to schedule a series of meetings with these impacted communities.<sup>30</sup> We are sure that if the neighborhood you live in were in the potential accident zone for one of these “temporary” generation units or their inevitably associated pipelines and other infrastructure, you would want the agencies in charge to be accountable to you and your family.

In short, multiple legal authorities require the agencies to carefully consider the human health and environmental impacts of the project, particularly on low-income communities, before it proceeds. Again, the agencies must postpone any awarding or funding of contracts under the MATOC until they have completed this analysis.

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<sup>27</sup> Sierra Club v. FERC, 867 F.3d 1357, 1370-1371 (D.C. Cir. 2017).

<sup>28</sup> The Guidance Manual for Environmental Report Preparation at 3-1.

<sup>29</sup> Bachhuber, Hengesh & Sunderman, Liquefaction Susceptibility of the Bayamon and San Juan Quadrangles, at Figure 6,

[https://earthquake.usgs.gov/cfusion/external\\_grants/reports/03HQGR0107.pdf](https://earthquake.usgs.gov/cfusion/external_grants/reports/03HQGR0107.pdf) at 22, 26, 30 (2008).

<sup>30</sup> 40 C.F.R. § 1501.9: “As part of the scoping process the lead agency may hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may integrate with any other early planning meeting.”



**2. There is no reliable fuel supply for these “emergency” generating units.**

Another significant concern about the proposed project is that the generating units will not have any safe and reliable source of fuel, potentially crippling their ability to actually serve their intended function in an emergency. These units would rely on gas trucked from New Fortress Energy’s unpermitted LNG Terminal in San Juan. This facility still does not hold the required approval from the Federal Energy Regulatory Commission, which has expressed concern about safety concerns ranging from tsunamis, to seismic events—including the consequences of NFE’s poor piping foundation design in the event of a soil liquefaction event—to the potential for explosions or other risks of an uncontained vapor cloud dispersion.<sup>31</sup> Critically, NFE has already demonstrated that it cannot be relied on at critical junctures. In March 2023, Puerto Rico’s electric utility accused NFE of multiple operational failures, including unplanned shutdowns, mismanagement, and failure to deliver gas from October 2021 to February 2022, and again in March and April 2022.<sup>32</sup>

NFE plans to deliver fuel to the San Juan units by pipeline, and to the Palo Seco units through a “virtual pipeline” of trucks. Observers have already noted immense truck traffic from San Juan to the temporary units in Palo Seco. Both trucks and pipelines are far inferior to the distributed clean energy options available in Puerto Rico, even on a short-term temporary basis. Critically, it may be impossible to deliver LNG through these methods when infrastructure, ports and roads are damaged after major disasters, which is when power is needed the most.

In sum: we urge the Army Corps and FEMA to cancel, or at least halt, these plans before wasting taxpayer money, endangering nearby communities, and interfering with Puerto Rico’s clean energy transition. We request a meeting to discuss these concerns further.

Respectfully,

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<sup>31</sup> January 26, 2023, *Engineering Information Request*, FERC Docket CP21-496-000.



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