


**AN APPLICATION TO THE U.S. DEPARTMENT OF
HOMELAND SECURITY FOR A LIMITED JONES ACT
WAIVER FOR THE SHIPMENT OF LIQUID NATURAL
GAS TO PUERTO RICO UNDER 46 U.S.C. § 501(b)**

and

**A REQUEST TO THE U.S. DEPARTMENT OF DEFENSE
TO REQUEST A LIMITED JONES ACT WAIVER FOR
THE SHIPMENT OF LIQUID NATURAL GAS TO
PUERTO RICO UNDER 46 U.S.C. § 501(a)**

Applicants:

Hon. Ricardo A. Rosselló Nevares 
Governor, Commonwealth of Puerto Rico
on behalf of himself and
the Commonwealth of Puerto Rico

Hon. José F. Ortiz Vázquez, Executive Director 
Puerto Rico Electric Power Authority (PREPA)

Hon. Luis Gerardo Rivera Marín 
Secretary of State, Commonwealth of Puerto Rico

Hon. Luis Burdiel Agudo, President 
Economic Development Bank of Puerto Rico

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INTRODUCTION

Governor Ricardo A. Rosselló-Nevarés, on behalf of himself and the Commonwealth of Puerto Rico, the Puerto Rico Electric Power Authority (PREPA) through Executive Director José F. Ortiz Vázquez,¹ Puerto Rico Secretary of State Luis Gerardo Rivera-Marín, and President Luis Burdiel-Agudo of the Economic Development Bank of Puerto Rico (the "Applicants") hereby submit this Application (the "Application") to the U.S. Department of Homeland Security for a limited Jones Act waiver under 46 U.S.C. § 501(b) to permit PREPA and the Commonwealth to transport natural gas it wants to purchase in the United States to Puerto Rico. This Application is also a request to the U.S. Department of Defense to request a limited Jones Act waiver under 46 U.S.C. § 501(a). The need for such a waiver is clear: there are no U.S. flagged Jones Act eligible Liquid Natural Gas ("LNG") carriers in the U.S. Merchant Marine fleet. Without a waiver, PREPA simply cannot purchase U.S. produced natural gas, and long-term purchase contracts of foreign-produced natural gas will remove any short-term incentive for U.S. companies to construct and commission U.S. flagged Jones Act eligible LNG carriers. Certainly, there are strong economic justifications for a limited waiver:

- A limited waiver will facilitate Puerto Rico's needed conversion to a more cost-efficient and environmentally sensitive source of energy that will reduce the cost of power production to bolster an ailing economy;
- A limited waiver will enable Puerto Rico to purchase natural gas from the U.S. mainland, which has an abundance of supply; and

¹ PREPA is a corporation wholly-owned by the Commonwealth of Puerto Rico. It is governed by a board of directors, four of whom are appointed by the Governor (with the advice and consent of the Senate) and three of whom are elected by the consumers.

- A limited waiver will create an immediate strong incentive for U.S. shippers to make the critical investments necessary to construct and commission U.S. flagged Jones Act eligible LNG carriers.

There are, however, equally strong national security justifications in granting a limited waiver:

- Absent a waiver, Puerto Rico cannot purchase natural gas from the United States, which means that it will be required to seek alternative long-term sources of supply, such as Russia, China, Qatar, UAE, Saudi Arabia and Venezuela. The foreign supply will be shipped to this U.S. Commonwealth, on a long-term basis, aboard foreign-flagged LNG carriers;
- A limited waiver will ensure a consistent and stable supply of U.S. produced natural gas to power pharmaceutical facilities that provide a substantial portion of the U.S. mainland's pharmaceuticals, some of which are critical and only produced in Puerto Rico;
- A limited waiver will create an immediate incentive for U.S. shippers to invest in the construction and commission of U.S. flagged Jones Act eligible LNG carriers, thereby strengthening the dwindling U.S. Merchant Marine fleet; and
- A limited waiver is consistent with current law and national security policy which allows for Merchant Marine cadets and Academy graduates to serve upon foreign flagged LNG carriers to ensure that the U.S. Merchant Marine has the necessary expertise to operate LNG carriers once such vessels exist in the U.S. Merchant Marine fleet.
- A limited waiver will ensure a stable and cost effective source of power to U.S. Army Fort Buchanan, which is the only active U.S. military installation in Puerto Rico, provides administrative support to NORTHCOM, operational support to SOUTHCOM, support to national guard and naval reserve units, and support to veterans residing in Puerto Rico and the Caribbean.

For the reasons set forth herein, the Applicants respectfully submit that their request for a limited waiver is warranted, reasonable, and unquestionably in the United States' immediate national security interests.

A. Legal Basis for the Waiver

The Jones Act, 46 U.S.C. § 55102, states "a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the

United States to which the coastwise laws apply, either directly or via a foreign port" unless the vessel was built in and documented under the laws of the United States and is wholly owned by persons who are citizens of the United States. Such a vessel, after obtaining a coastwise endorsement from the U.S. Coast Guard, is "coastwise-qualified." The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

The navigation laws, including the coastwise laws, can be waived under the authority provided by 46 U.S.C. § 501. This statute provides:

Waiver of navigation and vessel-inspection laws

(a) On Request of Secretary of Defense.—On request of the Secretary of Defense, the head of an agency responsible for the administration of the navigation or vessel-inspection laws shall waive compliance with those laws to the extent the Secretary considers necessary in the interest of national defense.

(b) By Head of Agency.—When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual, following a determination by the Maritime Administrator, acting in the Administrator's capacity as Director, National Shipping Authority, of the non-availability of qualified United States flag capacity to meet national defense requirements, may waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes.

(c) Termination of Authority.—The authority granted by this section shall terminate at such time as the Congress by concurrent resolution or the President may designate.

PREPA and the Commonwealth submit this Application and request under both subsections (a) and (b). As set forth herein, it is respectfully submitted that there is an

immediate necessity in furtherance of national security that would justify a request from the Secretary of Defense under subsection (a). Alternatively, there are currently no Jones Act qualified or eligible U.S. flagged vessels that can ship LNG to Puerto Rico, and based upon our research, there will be no such vessels for a substantial amount of time. This fully satisfies subsection (b). Accordingly, the choice for the Department of Defense and the Department of Homeland Security is clear: grant the waiver and allow Puerto Rico to purchase U.S. produced gas, or deny the waiver and force Puerto Rico to purchase foreign produced gas from Russia, the Middle East, Africa and Trinidad. The basis underlying these justifications are set forth below.

B. The Need for New Electric Generation Facilities

PREPA and the Commonwealth of Puerto Rico must convert its electric generators from bunker C oil and diesel oil to natural gas. It has no choice. Hurricane Maria damaged Puerto Rico's aging and fragile electric generation infrastructure and destroyed its transmission infrastructure. PREPA's problems, however, long predated the devastation caused by Hurricane Maria. As noted by the Congressional Research Service: "Even before the 2017 hurricane season, Puerto Rico's electric power infrastructure was known to be in poor condition, due largely to underinvestment and the perceived poor maintenance practices of the Puerto Rico Electric Power Authority (PREPA)."²

Much of the cause was a vicious cycle resulting from the high cost of importing all of the components necessary to generate and transmit electricity throughout the island, from the parts to maintain the generation and transmission facilities to the fuel that is

² Richard J. Campbell, et al., Cong. Research Serv., *Repair or Rebuild: Options for Electric Power in Puerto Rico* 2 (Nov. 16, 2017), <https://fas.org/sgp/crs/row/R45023.pdf>.

required to run the generators. Consequently, the price of electricity to the average consumer in Puerto Rico is nearly double, and sometime nearly triple, to that of the 48 contiguous states. According to a Congressional Task Force, "the average price of electricity sold to the residential sector in Puerto Rico between 2005 and 2015 was 20.5 cents per kilowatt hour, peaking at 30.6 cents per kilowatt hour in February 2013." Congressional Task Force on Economic Growth in Puerto Rico, Bipartisan Report to the House and Senate, p. 36-37 (Dec. 10, 2016).³ By contrast, during that same period, "the average price of electricity sold to the residential sector in the 50 states and the District of Columbia was 11.4 cents per kilowatt hour."⁴

The problem for PREPA, however, is that the already depressed economy in Puerto Rico left a significant number of its consumers without an ability to pay for the power they consume. As noted by the Congressional Task Force: "The price of electricity in Puerto Rico is high, while the ability of some residents of Puerto Rico—where the median annual income is \$18,626—to pay is low."⁵ Stated otherwise, the high price of energy generation on the island, combined with the depressed economic resources of its customer base, significantly contributed in denying PREPA the financial ability to make the long-term infrastructure investments necessary to establish a reliable and sustainable power generation and transmission system for the future.

Since Hurricane Maria, the economic situation in Puerto Rico has worsened exponentially: destroyed business have not reopened, homes have not been rebuilt, and citizens have moved to the U.S. mainland and have not returned. One post Hurricane

³ Congressional Task Force on Economic Growth in Puerto Rico, *Report to the House and Senate* 36-37 (Dec. 10, 2016), <https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Task%20Force%20on%20Economic%20Growth%20in%20Puerto%20Rico%20Releases%20Final%20Report.pdf>.

⁴ *Id.* at 37, fn. 56.

⁵ *Id.* at 37.

Maria study estimated that more residents of Puerto Rico will emigrate to the U.S. mainland between 2017 and 2019 than the entire previous decade, or about 14% of its entire population.⁶ One year after Hurricane Maria, these estimates appear to have been realized, as up to 176,000 residents have emigrated to the U.S. mainland, and 265 – or 24% -- of the schools on the island remain closed.⁷

It must be emphasized that the administration of Governor Ricardo A. Rosselló and the current governing body of PREPA now have no choice but to address these economic issues, as well as the decisions, investment priorities and the consequences of past administrations. To that end, they must implement the changes recommended both by their consultants and U.S. Government agencies.

One core recommendation nearly identical in all reports is the need to provide a more efficient, lower cost and environmentally sensitive means of generating power. Although the preference is to increase the use of renewable energy sources, there is universal recognition that PREPA must immediately transition away from reliance upon diesel fuels. These recommendations all advise that PREPA must convert its existing generators, which principally rely upon expensive and polluting bunker C and diesel oils, to alternative fossil fuels – i.e., natural gas – until a higher penetration of renewable energy resources can be achieved. The Department of Energy recently

⁶ Edwin Meléndez & Jennifer Hinojosa, *Estimates of Post-Hurricane Maria Exodus from Puerto Rico*, CITY UNIVERSITY OF NEW YORK HUNTER COLLEGE CENTER FOR PUERTO RICAN STUDIES (Oct. 2017), https://centropr.hunter.cuny.edu/sites/default/files/RB2017-01-POST-MARIA%20EXODUS_V3.pdf.

⁷ CITY UNIVERSITY OF NEW YORK HUNTER COLLEGE CENTER FOR PUERTO RICAN STUDIES, *Puerto Rico One Year After Hurricane Maria* 15-22 (Oct. 2018), https://centropr.hunter.cuny.edu/sites/default/files/data_briefs/Hurricane_maria_1YR.pdf.

estimated that more than of 90% PREPA's energy generation capacity relies upon heavy fuel oil.⁸ As noted by the Congressional Task Force before Hurricane Maria:

Few, if any, observers question the conventional wisdom that Puerto Rico should take steps to reduce its disproportionate reliance on petroleum and increase its use of natural gas—of which the United States is now the world's largest producer—and renewable energy sources like solar power if economically viable.⁹

The Department of Energy echoed this recommendation after Hurricane Maria: "In part because of favorable economic forecasts related to natural gas, displacing oil imports with U.S. natural gas has been one of the explicit goals of Puerto Rico energy sector reform."¹⁰ The Congressional Research Service also made the same recommendation after Hurricane Maria: "Building a modernized, flexible electric grid, capable of incorporating more renewable sources of electricity, underpinned by more efficient natural gas combined-cycle power plants and energy storage, may help Puerto Rico accomplish these goals."¹¹

Accordingly, the need to convert Puerto Rico's power generating system to natural gas is a widely accepted fact, and the only question is from where the Commonwealth will be able to obtain its natural gas supply.

⁸ U.S. DEPARTMENT OF ENERGY, *Energy Resilience Solutions for the Puerto Rico Grid* 25 (June 2018), https://www.energy.gov/sites/prod/files/2018/06/f53/DOE%20Report_Energy%20Resilience%20Solutions%20for%20the%20PR%20Grid%20Final%20June%202018.pdf.

⁹ Congressional Task Force on Economic Growth in Puerto Rico, *supra* note 3, at 37.

¹⁰ U.S. DEPARTMENT OF ENERGY, *supra* note 8, at 24-25.

¹¹ Campbell, et al., *supra* note 2, at 2.

C. The Conversion Plan

1. Generating Facilities:

The first phase of PREPA's plan calls for the conversion of generating units at four (4) facilities over the next six years, with the first units being replaced by the end of 2019:

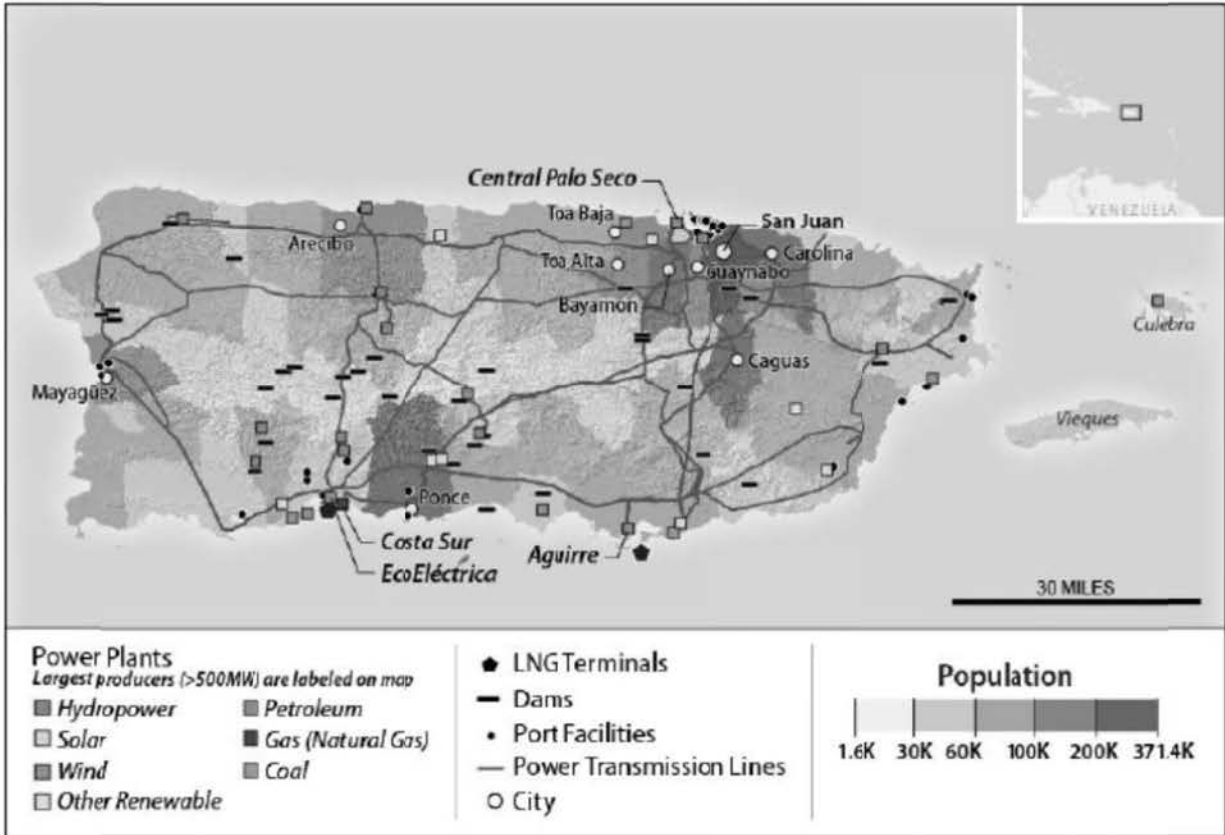
- San Juan Combine Generation Plant:
 - Units 5 & 6 - Approximately 440 MW Total (220 MW Each Unit)
 - Target Conversion Date: between 2nd and 4th Quarter 2019
- Mayaguez Generation Plant:
 - All Units (Units 1 – 4) – Approximately 220 MW Total
 - Target Conversion Date: 2021
- Aguirre Generation Plant¹²:
 - Units 1 and 2 – Approximately 900 MW Total (450 MW Each)
 - Target Completion Date: 2021
- Palo Seco :
 - All Units – Total Approximate 450MW to 500 MW
 - Target Completion Date: 2025

The locations of generating facilities throughout Puerto Rico are:

¹² PREPA is considering a new base-load generating plant in the east or southeast portion of the island that will be fired on natural gas. The new generation assets may replace the need for natural gas at Aguirre, but does not change the expressed need for new sources of natural gas as represented by the Aguirre conversion.

Figure I. Puerto Rico Energy Infrastructure, Topography, and Population Density

Other Major Infrastructure also Shown



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According to PREPA's estimates, it is anticipated that in the next six years, PREPA's estimated capacity annual usage of natural gas in the converted units will be as follows:

Plant	Units	Capacity (MW)	Capacity Factor (%)	Heat Rate (MMBtu/kWhr)	Annual NG (MMBtu/Yr)	LNG		Gasified	
						CM*	CF*	MM* CM	MM CFt
San Juan	5 & 6	440	85%	7.7	25,227,048	1,170,000	41,240,000	690	24,500
Mayaguez	1,2,3,&4	200	30%	10.5	5,518,800	260,000	9,020,000	150	5,400
Aguirre	1 & 2	900	10%	9.7	7,647,480	350,000	12,500,000	210	7,400
Palo Seco	New	500	75%	7.3	23,980,500	1,110,000	39,210,000	660	23,300

* CM=cubic meter, CF=cubic feet, MM=million

¹³ A reproduction of this image can be found in Campbell, et al., *supra* note 2, at 6.

Combining the estimated target conversion dates with the estimated annual usage, ***PREPA will require the delivery of approximately 1,780,000 cubic meters of LNG annually by the end of 2021 and 2,890,000 cubic meters of LNG annually by the end of 2025.***

2. LNG Receiving Terminals

In order to obtain the amount of LNG required, PREPA must obtain delivery of natural gas by LNG carrier (discussed in the next section) to receiving terminals and regasification facilities.

i. San Juan Generating Station

Currently, PREPA is in the advanced stages of converting San Juan Generating Station Units 5 and 6, and it is seeking the delivery of natural gas – in gas form – at its plants' boundaries by a third party through an RFP process. This will require the establishment of a receiving facility nearby. At present, the anticipated receiving facility will be a marine-based configuration of floating storage barges, docked to existing port infrastructure at San Juan Bay, that will receive ship-to-ship transfer of LNG from LNG carriers. The LNG will be transferred via pipeline to an on-shore regasification unit as required by the generation facility, where the gas will then be transferred via pipeline into the San Juan Generating Station. It is not anticipated that any substantial modifications to existing port infrastructure will be required. The proposed infrastructure will require government permitting. PREPA recently announced the selection of the winning proponent to its RFP Process, New Fortress Energy (NFE). NFE has pursued the development of a micro-fuel handling facility near the San Juan Power Plant, which they propose to leverage to provide fuel (natural gas) to PREPA. As part of their development program, NFE commissioned, an Environmental Assessment

(EA) is required by commonwealth regulations and administered by the Puerto Rico Permits Management Office (OGPe). NFE has reported to PREPA that while the EA was accepted and approved by the OGPe, it may require an amendment to allow for fuel sales to PREPA. Upon contract execution, it is anticipated that NFE will seek the appropriate amendments.. The U.S. Department of Energy must permit the importation of natural gas, and the U.S. Coast Guard must issue a letter of recommendation after considering port-specific issues. New Fortress Energy LNG has reported to PREPA that both the DOE importation authorization and U.S. Coast Guard letter of recommendation have been obtained. Any amendments to these authorizations will be sought following contract execution. Based on very preliminary discussions with NFE, natural gas may be physically available to serve the San Juan Power Plant as early as the second quarter of 2019.

ii. Mayaguez Generating Station

If the LNG receiving and regasification system at the San Juan Generating Station is successful from a deployment and permitting perspective, it is anticipated that a similar system will be deployed at Mayaguez Bay for the Mayaguez Generating Station.

iii. Aguirre Generating Station or new base-load generation in the east.

If the LNG receiving and regasification system at the San Juan Generating Station is successful from a deployment and permitting perspective, it is anticipated that a similar system will be deployed at Jobos Bay for the Aguirre Generating Station or, alternatively, for a new base-load generating asset in the east or southeast portion of the island..

D. Shipment of LNG to Puerto Rico

As indicated above, Puerto Rico will require the delivery of approximately 1,170,000 cubic meters of LNG by the end of 2019 and 1,780,000 cubic meters of LNG by the end of 2021. The only realistic and practical method of delivering this amount of LNG is by LNG carrier, as set forth below.

1. Current LNG Carrier Inventory

By the end of 2017, the worldwide LNG carrier fleet totaled 478 vessels, with an additional 106 vessels on order and expected for delivery through 2022.¹⁴ Although about 10% of the active fleet comprises "Q-Class" vessels that have an LNG capacity of 210,000 to 266,000 cubic meters, the standard capacity of the fleet is between 125,000 to 150,000 cubic meters.¹⁵ Recent vessel orders and deliveries generally have LNG capacities between 170,000 to 180,000 cubic meters.¹⁶

None of these vessels are U.S. flagged Jones Act eligible ships. Stated otherwise, and to be clear, there are no U.S. flagged Jones Act eligible LNG carriers in the U.S. Merchant Marine Fleet. Further, our research has not revealed any current orders for Jones Act eligible LNG carriers.

2. Non-Applicability of 46 U.S.C. § 12120

There is one law that, at first blush, may appear to directly address Puerto Rico's needs and obviate the need for a waiver. Upon a closer review and analysis, however, this law provides neither a legal nor practical solution. According to 46 U.S.C. § 12120, LNG carriers constructed prior to October 19, 1996 are not required to meet all of the requirements of the Jones Act:

¹⁴ INT'L GAS UNION, *2018 World LNG Report* 35-36, https://www.igu.org/sites/default/files/node-document-field_file/IGU_LNG_2018_0.pdf.

¹⁵ *Id.* at 39.

¹⁶ *Id.*

Liquified gas tankers

Notwithstanding any agreement with the United States Government, the Secretary may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquified natural gas or liquified petroleum gas to Puerto Rico from other ports in the United States, if the vessel—

- (1) is a foreign built vessel that was built before October 19, 1996; or
- (2) was documented under this chapter before that date, even if the vessel is placed under a foreign registry and subsequently redocumented under this chapter for operation under this section.

This law allows for the issuance of a coastwise endorsement for foreign-built LNG carriers constructed prior to October 19, 1996, and it waives compliance with 46 U.S.C. § 12112, which reads:

Coastwise endorsement

(a) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel that—

- (1) satisfies the requirements of section 12103 of this title;
- (2)
 - (A) was built in the United States; or
 - (B) if not built in the United States—
 - (i) was captured in war by citizens of the United States and lawfully condemned as prize;
 - (ii) was adjudged to be forfeited for a breach of the laws of the United States; or
 - (iii) qualifies as a wrecked vessel under section 12107 of this title; and
- (3) otherwise qualifies under the laws of the United States to engage in the coastwise trade.

(b) **AUTHORIZED ACTIVITY.**—Subject to the laws of the United States regulating the coastwise trade, a vessel for which a coastwise endorsement is issued may engage in the coastwise trade.

Even though this law allows for the issuance of a coastwise endorsement of foreign-built LNG carriers delivered before October 19, 1996, it does not waive compliance with other crucial provisions of the Jones Act. First, and foremost, the vessel must still be documented under 46 U.S.C. §§ 12102 and 12105. The relevant portion of 46 U.S.C. § 12102 reads:

Vessels requiring documentation

(a) **IN GENERAL.**—Except as otherwise provided, a vessel may engage in a trade only if the vessel has been issued a certificate of documentation with an endorsement for that trade under this chapter.

Under 46 U.S.C. § 12105, the certificate of documentation can only be issued if the vessel satisfies the ownership requirements of 46 U.S.C. § 12103:

Issuance of documentation

(a) **IN GENERAL.**—Except as provided in section 12152 of this title, the Secretary, on receipt of a proper application, shall issue a certificate of documentation or a temporary certificate of documentation for a vessel satisfying the requirements of section 12103 of this title. The certificate shall contain each endorsement under subchapter II of this chapter for which the owner applies and the vessel is eligible.

Pursuant to 46 U.S.C. § 12103, the vessel must be wholly owned by a citizen or citizens of the United States, and in the case of a corporate owner, the CEO, Chairman of the Board of Directors and a majority of the Board must be U.S. citizens:

General eligibility requirements

(a) **IN GENERAL.**—Except as otherwise provided, a certificate of documentation for a vessel may be issued under this chapter only if the vessel is—

- (1) wholly owned by one or more individuals or entities described in subsection (b);
- (2) at least 5 net tons as measured under part J of this subtitle; and
- (3) not documented under the laws of a foreign country.

(b) **ELIGIBLE OWNERS.**—For purposes of subsection (a)(1), the following are eligible owners:

- (1) An individual who is a citizen of the United States.
- (2) An association, trust, joint venture, or other entity if—
 - (A) each of its members is a citizen of the United States; and
 - (B) it is capable of holding title to a vessel under the laws of the United States or a State.
- (3) A partnership if—
 - (A) each general partner is a citizen of the United States; and
 - (B) the controlling interest in the partnership is owned by citizens of the United States.
- (4) A corporation if—
 - (A) it is incorporated under the laws of the United States or a State;
 - (B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

(C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

(5) The United States Government.

(6) The government of a State.

Accordingly, even if there were a foreign-built LNG carrier that was constructed before October 19, 1996, it would still need to be owned by U.S. Citizens. As of this date, there are no such LNG carriers that have been documented under 46 U.S.C. §§ 12102 and 12105, and the documentation of vessels under U.S. law is an obligation of U.S. shippers, not natural gas customers in the U.S. who seek to purchase U.S. natural gas.

For the sake of completeness, as of 2018, there are 478 LNG carriers in the world fleet.¹⁷ Of those, 41 were built before October 1996.¹⁸ And of those, the Appendix incorrectly lists one LNG carrier as currently owned by a U.S. company. The Bering Energy is an LNG carrier built in 1977 by General Dynamics and is listed as currently owned by General Dynamics. This is incorrect. According to news reports and industry websites, the vessel is owned by Sinokor Maritime Co Ltd, a South Korean company, and it registered in the Marshall Islands.¹⁹ Accordingly, there are no LNG carriers in the world fleet owned by U.S. companies or individuals.

It is respectfully submitted that PREPA and Puerto Rico should not be denied a limited Jones Act waiver because a law which may apply to a maximum of 41 LNG carriers may obviate the need for a waiver, even though no private shippers have taken steps to purchase a foreign-owned vessel, obtain documentation under 46 U.S.C. §§

¹⁷ INT'L GAS UNION, *supra* note 14, at app'x 6.

¹⁸ *Id.*

¹⁹ See VESSEL TRACKING, *BERING ENERGY (IMO 7390155) - LNG Tanker*, <http://www.vesseltracking.net/ship/bering-energy-7390155> (last visited Dec. 18, 2018); FAIRPLAY, *Sinokor buys idled elderly LNG carrier*, <https://fairplay.ihs.com/commerce/article/4294701/sinokor-buys-idled-elderly-lng-carrier> (last visited Dec. 18, 2018).

12102 and 12105 and then obtain a coastwise endorsement under 46 U.S.C. § 12120. Because no U.S. shippers have taken steps to obtain the requisite documentation and coastwise endorsement, there are still no Jones Act eligible LNG carriers in the U.S. Merchant Marine fleet.

2. Current LNG Bunkering Barge Inventory

As of 2018, there are only 9 LNG Bunkering Barges in the worldwide fleet, with an expected delivery of an additional 9 by the end of 2020. Except for one, all of these barges are foreign flagged.²⁰ In 2018, LNG Bunkering Barge Clean Jacksonville was delivered, and by all accounts, it is the only Jones Act eligible LNG barge or vessel in existence. This LNG bunkering barge is designed solely for inland waterway and near-coastal service, only has an LNG capacity of 2,000 cubic meters, and is dedicated to bunkering Tote Marine's LNG powered ships.²¹

As stated previously, however, none of the LNG bunkering barges, including Clean Jacksonville, can meet PREPA's anticipated annual demand for LNG. By way of an extreme example, if Puerto Rico were to exclusively charter Clean Jacksonville, it would be required to make 585 round trips to the U.S. mainland per year, or 1.6 round trips per day, to satisfy the anticipated demand of only the San Juan Generating Station. Setting aside the fact that Clean Jacksonville was not designed for open-ocean transport, it is simply not possible for a single – or even a few – LNG barges to meet PREPA's anticipated LNG demand.

²⁰ Mike Corkhill, *LNG bunker vessels: fleet review*, LNG WORLD SHIPPING (Aug. 9, 2018), https://www.lngworldshipping.com/news/view,lng-bunker-vessels-fleet-review_53852.htm.

²¹ HEC—HERBERT ENGINEERING CORP., *Clean Jacksonville LNG Bunker Barge* (Apr. 30, 2018), <https://www.herbert.com/news/2018/4/30/gtt-lng-bunker-barge>.

3. LNG ISO Containers

LNG ISO containers will not meet PREPA's anticipated demand for LNG. Currently, the standard LNG ISO container being shipped to the island is 40 feet, and each LNG ISO container has an LNG capacity of about 43.5 cubic meters.²² Accordingly, it would take approximately 27,012 LNG ISO container shipments to meet PREPA's demand for the San Juan Generating Station alone, which is simply not practical.

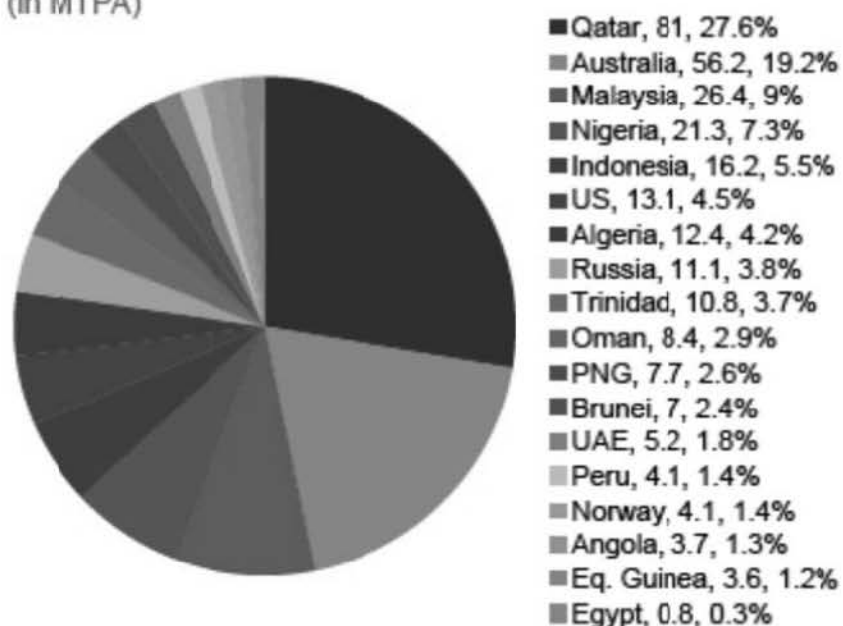
E. Potential Sources of Supply of Natural Gas

1. Foreign Sources of Supply

PREPA is currently in the final stages of selecting a third-party supplier of natural gas for the San Juan Generation Station through an RFP process that commenced earlier this year. Because there is currently no limited Jones Act waiver, the likely sources of supply for this third-party vendor will be Qatar, Russia, Nigeria, UAE, Oman and/or Trinidad. This is entirely consistent with the market share and the availability of natural gas in the world market:

²² Mike Corkhill, *Flexible ISO tanks boost small-scale LNG*, LNG WORLD SHIPPING (May 26, 2017), https://www.lngworldshipping.com/news/view,flexible-iso-tanks-boost-smallscale-lng_47842.htm.

Figure 3.2: LNG Exports and Market Share by Country (in MTPA)



Note: Numbers in the legend represent total 2017 exports in MT, followed by market share. Source: IHS Markit, IGU

Additionally, with a surplus of available foreign flagged LNG carriers and the expansion of the Panama Canal to allow for more transits of these vessels (90% of the world LNG carrier fleet can transit the canal), purchasing natural gas from Asia and the Pacific Rim is becoming more economical.²⁴

The term of the proposed San Juan RFP contract is five (5) years with additional five (5) year extensions. Negotiation of the contract is pending, but the contract will allow PREPA to redirect the source of supply as there are no "take or pay" provisions in the contract. Stated otherwise, if a Jones Act waiver is granted, then PREPA itself or the third party vendor will be able to purchase all of PREPA's needs from the U.S. Absent a waiver, however, PREPA will be required to obtain its supply of natural gas from one of the aforementioned foreign sources.

²³ This image can be found in INT'L GAS UNION, *supra* note 14, at 35-36.

²⁴ *Id.* at 42.

The RFPs for the Mayaguez and Aguirre Generating Stations will be issued in 2019, and the RFP for the Palo Seco Generating Station will issue in 2020.

It should be noted that there is already one natural gas generating station in Puerto Rico. EcoElectrica, Inc., a private company whose principal shareholder is the Spanish conglomerate Naturgy Energy Group S.A., offers electricity to certain manufacturing operations on the island, and it generates about 9% of the annual capacity in Puerto Rico.²⁵ EcoElectrica has its own receiving terminal and regasification facility, and because there has been no Jones Act waiver, it receives all of its supply from foreign countries via foreign flagged LNG carriers. In addition, excess LNG capacity is currently sold to PREPA to power two ~450MW boilers at PREPA's Costa Sur Power Plant that are located near the receiving terminal. According to the U.S. Energy Information Administration (part of the U.S. Department of Energy), there were 28 cargoes of LNG delivered to EcoElectrica in 2016, and up to the point of Hurricane Irma in 2017 (just before Hurricane Maria):

The last LNG import cargo was offloaded on September 8, just before hurricane Irma arrived. All of the 15 LNG cargos imported in 2017 were from Trinidad and Tobago. ***None of Puerto Rico's LNG imports into Peñuelas came from the United States because none of the LNG shipping vessels in the global fleet can meet all of the Jones Act requirements.***²⁶

2. U.S. Supply

There is an abundance of U.S. natural gas supply, and in 2017, the U.S. was second only to Australia in the increase in net exports of natural gas over 2016.²⁷ With

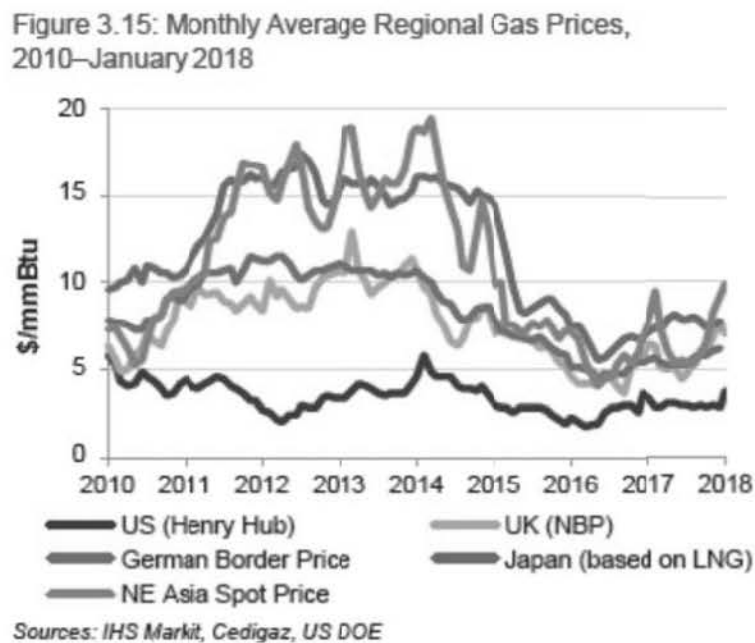
²⁵ Campbell, et al., *supra* note 2, at 5.

²⁶ U.S. ENERGY INFORMATION ADMINISTRATION, *Natural Gas Weekly Update* (Oct. 5, 2017), https://www.eia.gov/naturalgas/weekly/archivenew_ngwu/2017/10_05/ (emphasis added).

²⁷ INT'L GAS UNION, *supra* note 14, at 9-10.

significant expansions at Sabine Pass LNG, the U.S. will increase both its capacity and its world market share of LNG exports.

It is anticipated that PREPA can obtain its natural gas from producers in Texas, Oklahoma, Kansas, Colorado, Wyoming, Utah, New Mexico and Louisiana, and it will ship LNG through Sabine Pass, Louisiana. PREPA's internal analyses calculate the expected price advantage to be at least an average of \$1.0/MMBtu. The chart below demonstrates the significant price advantage of U.S. natural gas over other foreign sources:



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If a waiver is granted, it is anticipated that PREPA will obtain its LNG through Sabine Pass LNG Terminal, Sabine Pass, LA (i.e., the port of lading).

F. Jones Act Limited Waiver Request

The Applicants seek a ten (10) year waiver of the Jones Act limited solely to the delivery of U.S. produced LNG to the island, subject to an automatic termination if and

²⁸ A reproduction of this image can be found at *id.* at 17.

when a Jones Act eligible LNG carrier becomes available. This request is made both under 46 U.S.C. § 501(a) to the Department of Defense (for a request by the Secretary of Defense to the Secretary of Homeland Security) and 46 U.S.C. § 501(b) to the Secretary of Homeland Security. It is recognized that this is not a traditional waiver request in that it is not seeking a waiver related to a particular shipment between identified ports of lading and unloading, but these are not ordinary circumstances and 46 U.S.C. § 501 *does not prohibit the Department of Homeland Security from granting such long-term waivers or otherwise suggest that waivers can only be considered on a shipment-by-shipment basis.* In fact, it is respectfully submitted that the statute anticipates such requests in that it permits the Secretary of Homeland Security the authority to ". . . waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes." 46 U.S.C. § 501(b). Indeed, the Department of Homeland Security issued such blanket waivers after the Exxon Valdez incident in 1989 and in response to Hurricanes Katrina and Rita in 2005, Hurricane Sandy in 2012, and Hurricanes Irma and Maria in 2017.

In each of these incidents, as well as in the traditional "single shipment" waivers, the justification for the waivers were the unavailability of Jones Act eligible vessels and the importance of such waivers to "economic security and national defense."²⁹ In fact, in 2011, each of the "single shipment" waivers relating to petroleum products shipped from the Strategic Petroleum reserves contained a justification from the Department of Energy that stated: "petroleum availability is crucial to economic security and the

²⁹ Michael Chertoff, Sec'y U.S. Dep't Homeland Security, Waiver of Compliance with Navigation and Inspection Laws (Sep. 1, 2005), <http://keithhennessy.com/wp-content/uploads/2015/05/Waiver-of-Compliance-with-Navigation-and-Inspection-Laws-9-1-05.pdf>. For a collection of Single Shipment Waivers issued by the Department of Homeland Security in 2011, *see* <https://www.dhs.gov/sites/default/files/publications/jones-act-3.pdf>.

national defense."³⁰ All of these elements exist in the current Application in full satisfaction of the law.

1. Unavailability of Jones Act Eligible Vessels

With the instant waiver, it is undisputed that there are no Jones Act eligible LNG carriers nor any other realistic means to convey the LNG PREPA needs via Jones Act eligible vessels. This fact was recognized recently by the Department of Energy, which also noted that there may be no capacity at U.S. shipyards to construct LNG carriers until the mid-2020s:

In order to increase the use of natural gas from the United States, and thereby reduce foreign fuel imports, the gas must be transported in compliance with the Jones Act, overseen by the Maritime Administration of the Department of Transportation. There are currently no Jones Act compliant vessels available to deliver large volumes of U.S. LNG to Puerto Rico. There may be no capacity at U.S. shipyards to build a Jones Act compliant ship for LNG transport before the mid-2020s.³¹

Whether the Department of Energy found that U.S. shipbuilders could not deliver a Jones Act eligible LNG vessel until the mid-2020s or that they do not have the capacity to commence construction until the mid-2020s – which would then take several years thereafter until delivery – remains unclear. The point is, however, that even under the best-case scenarios, there will be no Jones Act eligible LNG carriers until the mid-2020s. Puerto Rico does not have that amount of time, and there are important economic and national security interests at stake.

³⁰ See the collection of Single Shipment Waivers issued by the Department of Homeland Security in 2011, *supra* note 29.

³¹ U.S. DEPARTMENT OF ENERGY, *supra* note 8, at 25-26.

2. Economic Interests

If petroleum availability is both in the nation's economic and national defense interests, then making U.S. produced natural gas available to the United States' Commonwealth is in both the island's and in the U.S. mainland's best interests. First, making more affordable natural gas available to these United States' citizens will substantially assist the economy of Puerto Rico in that it will: 1) make electricity more affordable to the residents; 2) make the costs of doing business in Puerto Rico lower; 3) encourage outside investment in this severely depressed economy; and 4) assist PREPA and the Commonwealth in regaining its borrowing capacity. Second, allowing Puerto Rico to purchase U.S. produced natural gas will economically benefit the U.S. mainland based producers, which should be prioritizing sales to U.S. States and Territories. It makes no sense to claim that the U.S. strives for energy independence on the one hand and then deny the ability of its citizens to purchase U.S. produced gas on the other.

And third, a limited waiver will demonstrate the immediate demand for Jones Act eligible ships. Despite the fact that PREPA is in the final stages of approving a five (5) year contract for the initial conversion process, it will need to enter into longer term contracts of 20 to 30 years in order to take advantage of long-term volume discounts. If Puerto Rico obtains a limited waiver and enters into a long term purchasing contract with U.S. producers, then U.S. maritime shippers will be incentivized to make the substantial investment to design and construct Jones Act eligible LNG carriers. If Puerto Rico enters into long-term purchasing contracts with foreign suppliers, then this incentive is eliminated. Hence, it is in the economic and national defense interests to incentivize U.S. maritime shippers to construct such vessels, thereby strengthening the U.S. Merchant Marine fleet.

Finally, as a matter of consistency and fairness, a limited Jones Act waiver is warranted and must be granted. Both the U.S. Department of Energy and the U.S. Congress – in a bipartisan report – stated in no uncertain terms that PREPA must eliminate its reliance on diesel fuel and convert its facilities to less expensive, less polluting and more efficient natural gas. Hence the Administration and the Congress cannot unequivocally state that Puerto Rico must convert its power generation to natural gas and then deny it the ability to do it in the most cost-effective fashion with U.S. produced natural gas. It must be emphasized that denying a waiver would, in fact, be denying Puerto Rico's ability to purchase U.S. produced natural gas because there is no method by which Puerto Rico can purchase U.S. produced gas and comply with the Jones Act.

3. Interests of National Security

- i. *The Need to Supply a U.S. Commonwealth with U.S. Produced Natural Gas Instead of Natural Gas Produced and Shipped by Russia, Oman, Nigeria, UAE, Qatar or Other Foreign Producers*

In order to purchase natural gas from U.S. producers, PREPA and the Commonwealth of Puerto Rico must have a limited Jones Act waiver. It has no choice, and there is no other way. Absent a waiver, it will be forced to enter into long-term purchasing contracts for natural gas from foreign sources. Among those foreign countries from which PREPA may purchase natural gas are Oman, Russia, Nigeria, UAE, Qatar or Trinidad. In such an instance, PREPA can ship natural gas in any LNG carrier that is available. It is respectfully submitted that the latter option is not in the best interests of the Nation's national security for a U.S. Commonwealth to enter into a long-term purchasing arrangements with one or more foreign sources, particularly if the

United States' diplomatic relations with those countries are fluid and subject to change over time.

On the other hand, the Secretary can place whatever conditions on a limited waiver that is deemed necessary in the national interests. For instance, it could require that any foreign flagged LNG carrier maintain at least one U.S. Merchant Marine deck officer present to enhance security and further the training interests as explained below.

ii. *The Need for an Uninterrupted Supply of Critical Medical Supplies to the U.S. Mainland*

Puerto Rico plays a critical part in the United States' healthcare industry, and ensuring an uninterrupted supply of necessary medical products to the U.S. mainland is important to our national security interests. As recognized by the U.S. Food and Drug Administration:

- Puerto Rico produces more pharmaceutical products for the U.S. (\$40B) than any foreign country. The next largest producer is Ireland with nearly \$20B in imports.
- Puerto Rico also produces more pharmaceuticals than any state (by dollar value). The next largest producers are Indiana and California, but Puerto Rico produces more pharmaceuticals than both of these states combined.
- 8% of pharmaceutical expenditures by Americans are for products manufactured in Puerto Rico; with many important drug categories including oncology drugs, HIV drugs, and blood fraction products.
- According to the National Drug Code directory, there are more than 1,000 individual drug products that are registered to be manufactured in Puerto Rico; of which several hundred of these drugs are considered by FDA to be medically important.
- Puerto Rico manufactures 30 drug products and approximately 10 biological devices/biologics that are of critical importance because Puerto Rico is a primary or sole manufacturing site and these drugs do not have clear therapeutic alternatives.

- All 40 of these products are being carefully monitored by the FDA Drug Shortage Teams; 14 of these drugs are sourced only in Puerto Rico.³²

In the aftermath of Hurricane Maria, the U.S. Mainland experienced a critical shortage of intravenous saline bags. As acknowledged by the FDA, Baxter Pharmaceutical's reliance upon its connection to the commercial power grid – which was decimated by the hurricane – was a significant contributor to the shortage.³³

This was no ordinary shortage: its significant impact upon the U.S. mainland's healthcare industry was widely recognized and publicized. As reported in one publication:

There have been intermittent IV bag and fluid shortages across the country since 2014, but the hurricane amplified the problem. Dr. O'Neil Britton, chief medical officer at Massachusetts General Hospital (MGH) in Boston, one of the country's top hospitals, tells *The American Prospect* that while he'd seen other medical device or drug shortages, "they've never been this persistent or widespread, and it's never affected the entire industry on this scale."³⁴

In response to this shortage, the FDA permitted Baxter Pharmaceuticals and other companies to import saline IV bags from other countries.³⁵

Despite the best efforts to rectify the critical shortage through the short-term allowance of additional imports, major associations representing the healthcare industry – in a rare joint letter to the U.S. Congress – indicated that such imports could

³² U.S. FOOD AND DRUG ADMINISTRATION, *Securing the Future for Puerto Rico: Restoring the Island's Robust Medical Product Manufacturing Sector* (Nov. 3, 2017), <https://www.fda.gov/downloads/NewsEvents/Newsroom/FDAInBrief/UCM584030.pdf>.

³³ Press Release, U.S. Food and Drug Administration, Statement by FDA Commissioner Scott Gottlieb, M.D., update on recovery efforts in Puerto Rico, and continued efforts to mitigate IV saline and amino acid drug shortages (Jan. 4, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm591391.htm>.

³⁴ Jordan Ecker, *How Neglect of Puerto Rico Sparked a National IV Bag Shortage*, THE AMERICAN PROSPECT (Feb. 20, 2018), <http://prospect.org/article/how-neglect-puerto-rico-sparked-national-iv-bag-shortage>.

³⁵ Press Release, U.S. Food and Drug Administration, FDA Commissioner Scott Gottlieb, M.D., updates on some ongoing shortages related to IV fluids (Jan. 16, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm592617.htm>.

only meet 10%-15% of the U.S. hospital and health-system demand.³⁶ The associations noted that in formulating long-term solutions, our government must ensure that there are adequate backup systems to guarantee that the supply of critical pharmaceuticals in the case of a natural disaster.³⁷

Accordingly, it is clear that Puerto Rico represents a core component of the United States' healthcare critical infrastructure, and as evidenced through the experience of Hurricane Maria, ensuring the uninterrupted flow of necessary pharmaceuticals represents a paramount national security interest:

When [the] supply chain gets interrupted, the whole system falters. “Our safety margin, our margin for adaptation within our supply lines, within medicine is incredibly thin and not robust,” says Biddinger. Establishing a stronger supply chain would be a good public health policy move: creating additional redundancy in the existing system would produce a more competitive marketplace, drive down health-care costs, and help stabilize the American health-care system during emergencies. Until then, many health-care professionals and patients have new perspectives on the precariousness of the medical supply chain that stretches from Puerto Rico to the outer reaches of the mainland.³⁸

Although Puerto Rico's power grid and transmission network are still being replaced with a new design that will better withstand most future hurricanes, the key is ensuring that there is a consistent and reliable supply of energy generation to the pharmaceutical companies that provide a significant amount of critical healthcare products to the U.S. mainland. A limited Jones Act waiver will facilitate the modernization of PREPA's power generation capabilities to provide a more reliable and

³⁶ Joint Letter by the American Hospital Association, American Society of Anesthesiologists, American Society of Clinical Oncology, American Society of Health-System Pharmacists, American Society for Parenteral and Enteral Nutrition, and Institute for Safe Medication Practices to Congressman Morgan Griffith and Congresswoman Diana DeGette (Nov. 9, 2017), <https://www.aha.org/system/files/advocacy-issues/letter/2017/171109-jointletter-drug-shortage.pdf>.

³⁷ *Id.*

³⁸ Ecker, *supra* note 34.

less expensive source of power generation, and because power generation will be less expensive, it will provide PREPA with the necessary additional financial resources to continue to upgrade and strengthen its transmission capabilities thus ensuring reliability and consistency for these critical pharmaceutical manufacturers. Accordingly, it is respectfully submitted that a limited Jones Act waiver is in the national security interests of the United States because it protects the supply chain of critical and necessary pharmaceuticals to the U.S. mainland.

iii. *The Need to Incentivize Private Shipping Companies to Commission Construction of Jones Act Eligible LNG Carriers to Strengthen the U.S. Merchant Marine Fleet.*

Currently, there is an over-supply of LNG carriers in the world fleet, but as set forth above, none of these vessels are Jones Act eligible. If this Application is denied, then PREPA will be forced to enter into long-term purchasing contracts – between 20 and 30 years – with foreign sources of natural gas and available shippers. During this entire term, private U.S. shippers will have no incentive to commission the construction of Jones Act eligible LNG carriers, thus denying the U.S. Merchant Marine fleet of this capacity. On the other hand, a limited Jones Act waiver that is conditioned upon an automatic expiration once a Jones Act eligible LNG carrier becomes available creates a strong incentive for private U.S. carriers to commission the construction of such a vessel. In that instance, the U.S. Merchant Marine fleet would obtain capacity that it is currently lacking: bulk transportation of LNG. With an increasing number of LNG-fueled Jones Act eligible vessels in the U.S. Merchant Marine fleet,³⁹ maintaining the availability of U.S. produced natural gas – an abundant, reliable and economical source

³⁹ See TOTE, *General Dynamics NASSCO Delivers Second Liquefied Natural Gas Containership*, <http://www.toteinc.com/general-dynamics-nassco-delivers-second-liquefied-natural-gas-containership/> (last visited Dec. 18, 2018).

of supply – creating such incentives is inherently in the national defense interests of the United States. Accordingly, it is respectfully submitted that a limited waiver conditioned upon an automatic termination significantly strengthens national security interests in a manner that a denial of the waiver would not.

iv. *Training of Cadets and Graduates of the Merchant Marine Academy*

One of the vital national security interests served in granting a limited waiver is to provide the U.S. Merchant Marine fleet with the necessary expertise and manpower necessary to operate U.S. flagged LNG carriers once they have been constructed and commissioned. Stated otherwise, a limited Jones Act waiver would be consistent with current U.S. national security policy with respect to LNG carriers. Congress has long recognized the need to prepare the U.S. Merchant Marine to serve aboard U.S. flagged LNG carriers even though there are no such vessels currently in the fleet. To that end, Title 46 of the United States Code was amended in 2006 to allow for cadets of the Merchant Marine Academy to train aboard foreign flagged vessels:

Places of training

The Secretary of Transportation may provide for the training of cadets at the United States Merchant Marine Academy—

(1) on vessels owned or subsidized by the United States Government;

(2) on other documented vessels, with the permission of the owner;

(3) in shipyards or plants and with industrial or educational organizations; and

(4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.

[46 U.S.C. § 51307 (emphasis added).]

Subsection 4 was an amendment added through Pub. L. 109–241, title III, §307 (July 11, 2006), and the specific purpose of this amendment was to provide the Merchant Marine with the necessary expertise and training in the operation of LNG carriers:

Section 406. Training of cadets at United States Merchant Marine Academy

Section 406 authorizes cadets at the Merchant Marine Academy to train aboard foreign-flagged liquid natural gas (LNG) vessels if the Secretary determines that such training is in the interest of the United States. Currently, cadets at the Academy are prohibited from training aboard foreign-flagged vessels; however there are no U.S.-flagged LNG vessels in operation. Future national energy strategies will likely place increased emphasis on the transport of LNG to U.S. ports resulting in a high demand for merchant mariners with previous training and experience aboard LNG vessels. This authority will allow Merchant Marine Academy cadets to gain that training in the interim before U.S.-flagged LNG vessels come into operation.

[H. Rept. 109-204, 16 (July 28, 2005).]

That the national interests are served by allowing U.S. Merchant Seamen to gain experience aboard LNG carriers has been specifically recognized by MARAD:

The Maritime Administration is required to consider national interests in the issuance of deepwater port licenses. We consider the employment of American citizens aboard vessels serving the nation's natural gas and oil receiving and exporting facilities to be in the best interest of the United States. Placing the transportation of LNG and oil under the control of U.S. mariners, who are subject to strenuous security checks, will add an additional layer of security to our nation's energy supply chain.⁴⁰

Although there are currently no Jones Act eligible LNG vessels, PREPA's conversion to natural gas will increase the demand for domestic maritime

⁴⁰ MARAD, *Utilization of U.S. Vessels and Mariners Initiative*, (updated Oct. 30, 2018), <https://www.maritime.dot.gov/ports/deepwater-ports-and-licensing/utilization-us-vessels-and-mariners-initiative>.

transportation of LNG, thus creating a greater incentive for private investment in our nation's maritime infrastructure. This will ultimately require U.S. Merchant seamen experienced in LNG transportation, which at the present time, such experience can only be obtained through service aboard foreign-flagged vessels. Further, as stated above, the Secretary can condition any limited waiver on the presence of one or more U.S. Merchant Seamen aboard any foreign flagged LNG carrier that transports LNG to Puerto Rico. Accordingly, it is respectfully submitted that a limited Jones Act waiver is appropriate and warranted, especially if a condition of such waiver is that at least one U.S. Merchant Marine deck officer is present on an LNG carrier transporting LNG to Puerto Rico.⁴¹

v. *The Need to Support Fort Buchanan and its Service Members*

U.S. Army Fort Buchanan is the only remaining active military installation in Puerto Rico. Established in 1899, it now consists of 746.16 acres (including Las Colinas, Coconut Grove and Coqui Gardens family housing) with a real estate value estimated at \$560 million dollars. It serves a population of approximately 130,000 among veterans, retirees, civilians, military personnel and their dependents in Puerto Rico, Virgin Islands and Latin America. Fort Buchanan is host to a number of tenant activities, such as: the 1st Mission Support Command, the U.S. Army Reserve major tenant unit, other Reserve and Puerto Rico National Guard components, Navy Reserve, Marine Reserve, Army/Air Force Exchange Services (AAFES), Defense Commissary Agency (DECA), Rodriguez Army Health Clinic (RAHC), Veterinarian Clinic, Defense Military Pay Office (DMPO), Defense Contracting Audit Agency, TRICARE, Community Based Warriors in

⁴¹ It is our understanding that the presence of a U.S. Merchant Marine deck officer could be required as an agent of PREPA or the Commonwealth as a condition of the lease of the foreign LNG carrier.

Transition Unit (CBWTU), Civilian Personnel Advisory Center (CPAC), Military Entrance Processing Station (MEPS), among others.

Fort Buchanan also hosts a number of non-DoD organizations that provide valuable services to Soldiers, their dependents and community members, such as: Pentagon Federal Credit Union, Banco Popular de Puerto Rico, U.S. Postal Service, AAFES Concessionaires and the U.S. Customs and Border Patrol.

As directed by the Chief of the Army Reserve, Fort Buchanan's island wide support mission consists of providing real property management and base operations support for all Army Reserve assets in Puerto Rico and the Virgin Islands. Also, on a reimbursable basis, when requested, provide support to the Puerto Rico National Guard and other reserve components of other services.

Fort Buchanan supports readiness and mission execution, providing quality services and facilities, optimizing resources, sustaining the environment and enhancing the well-being of the community. It conducts its mission sustained by seven directorates; Human Resources, Family, Morale, Welfare and Recreation; Plans, Training, Mobilization and Security; Emergency Services, Logistics, Public Works and Information Management; seven support offices - Legal, Public Affairs, Religious Support, Equal Employment Opportunity, Safety, Internal Review and Contracting; and three management and control offices - Resource Management; Plans, Analysis and Integration; and the Administrative Office.

Among the factors that make U.S. Army Garrison Fort Buchanan unique are: its key and strategic location providing fast and cost-effective support to missions in the Caribbean, Central and South America area or responsibility; its Hispanic cultural ties

with Latin America; and its significant role as host of "joint" sister services reserve components representing the U.S. Armed Forces in Puerto Rico.

The preceding description is, word for word, how the U.S. Army characterizes Fort Buchanan's significance and mission.⁴² The U.S. Army also states that Fort Buchanan is:

- A forward based training platform dedicated to enhancing individual and unit readiness and a forward based staging platform capable of rapidly deploying Joint Combined Arms Forces in support of Combatant Commanders requirements.
- A preeminent Joint, Inter-organizational, and Multi-National (JIM) team supporting NORTHCOM Defense Support to Civil Authorities (DSCA) & Humanitarian Assistance / Disaster Relief (HA/DR) missions and supporting SOUTHCOM operational & counter-drug task force missions.
- A provider of military services for the entire Caribbean region as well as Central and South America via a diverse Community of strong and resilient Soldiers, Civilians, Families, and partners.⁴³

What these descriptions do not include is the fact that Fort Buchanan relies upon PREPA for its power. After Hurricane Maria, both the installation and its service members were left without a reliable source of power and was required to obtain generators to support its relief mission after being without electricity for three days.⁴⁴

A limited Jones Act waiver will facilitate the modernization of PREPA's power generation capabilities to provide a more reliable and less expensive source of power generation, and because power generation will be less expensive, it will provide PREPA with the necessary additional financial resources to continue to upgrade and strengthen

⁴² U.S. ARMY, *U.S. Army Fort Buchanan Puerto Rico: History*, <https://home.army.mil/buchanan/index.php/about/history> (last visited Dec. 18, 2018).

⁴³ U.S. ARMY, *U.S. Army Fort Buchanan Puerto Rico: Mission and Vision*, <https://home.army.mil/buchanan/index.php/about/mission> (last visited Dec. 18, 2018).

⁴⁴ Daniel P. Elkins, *Hurricane Recovery Efforts Personal for Fort Buchanan Staff*, U.S. ARMY (Dec. 22, 2017), https://www.army.mil/article/198540/hurricane_recovery_efforts_personal_for_fort_buchanan_staff

its transmission capabilities thus ensuring reliability and consistency for Puerto Rico's only active military installation. It is respectfully submitted that it is unquestionably in the best interests of national security to ensure that this active military installation receives a cost effective and reliable source of power that is based upon a stable and consistent flow of U.S. produced natural gas.

vi. *Reduce China's Potential Influence Over Fossil Fuel Availability*

Since 2016, China's state-owned oil refiner, Sinopec, has maintained control of 75% of the largest oil storage facility nearest to Puerto Rico – the former HOVENSA oil refinery and storage facility in St. Croix, U.S.V.I.⁴⁵ Sinopec is currently increasing its world-wide refining capacity, and there are now plans to re-open the former refinery on St. Croix.⁴⁶ These operations are not occurring in a vacuum. China and Chinese related companies have continued in their decades-long efforts to assert influence over critical commerce infrastructure, such as the Panama Canal.⁴⁷ With the acquisition of Panama's largest port, and the investment of over \$1 billion into Panama's economy, China's ability to restrict and/or increase the costs of Puerto Rico's and U.S. access to world markets – including petroleum products – is of paramount concern. It is respectfully submitted that allowing Puerto Rico to purchase U.S. produced natural gas promotes energy independence and reduces China's ability to adversely affect Puerto Rico's access to natural gas.

⁴⁵ Joshua Shneyer, *ArcLight, Freepoint to buy Hovesna St. Croix refinery, plan storage hub*, REUTERS (Dec. 1, 2015), <https://www.reuters.com/article/us-hovenssa-refinery-storage/arclight-freepoint-to-buy-hovenssa-st-croix-refinery-plan-storage-hub-idUSKBN0TK4TM20151201>.

⁴⁶ Florence Tan, *ArcLight, China's Sinopec mulls U.S. oil projects ahead of Trump's visit; sources*, REUTERS (Oct. 31, 2017), <https://www.reuters.com/article/us-trump-asia-china-sinopec-corp/chinas-sinopec-mulls-u-s-oil-projects-ahead-of-trumps-visit-sources-idUSKBN1D00EV>.

⁴⁷ Michael Walsh, *China's appeal grows in Latin America, where 'America First' is winning Donald Trump few friends*, AUSTRALIAN BROADCASTING CORPORATION (Dec. 3, 2018), <https://www.abc.net.au/news/2018-12-04/chinas-appeal-grows-in-latin-america-as-america-first-falls-flat/10557418>.

4. Term of the Limited Waiver

The Applicants request a limited waiver for ten years because it must enter into long-term purchasing contracts in order to obtain the optimal pricing and secure a stable source of natural gas, which is standard in the industry. Further, the certainty of a reliable and consistent source of natural gas will further assist PREPA and the Commonwealth in attracting investors, businesses and bondholders because the risk of price fluctuations impacting the costs of energy production will be minimized.

The length of time of the limited waiver is also consistent with the U.S. Department of Energy estimates of the earliest potential delivery of a Jones Act eligible LNG carrier into the U.S. Merchant Marine fleet. Consequently, U.S. maritime shippers and the U.S. Merchant Marine fleet will lose nothing through the grant of a 10 year limited waiver, *which is conditioned upon an automatic expiration if a Jones Act eligible LNG carrier enters into the U.S. Merchant Marine fleet in less than ten years.*

5. Impact of a Denial of the Application

The Applicants respectfully submit that there can be no rational national security justification for denying a limited Jones Act waiver. There are no Jones Act eligible LNG carriers in the U.S. Merchant Marine fleet, and there is no reasonable prospect of an LNG carrier entering the fleet within the next 7 to 10 years. Solely from a fleet utilization perspective, the impact upon national security with the grant of the waiver is the same as if the waiver were to be denied: foreign LNG carriers will deliver LNG to Puerto Rico. The only difference is that the Department of Homeland Security, in conjunction with the Department of Defense, can maintain better control and monitoring of LNG shipments if a limited waiver is granted with conditions (such as requiring a U.S. Merchant Marine deck officer to be present during transit).

Further, the Department of Energy's and the Department of Homeland Security's previous justifications for granting waivers with respect to the Strategic Petroleum Reserve included that "petroleum availability is crucial to economic security and the national defense." It is respectfully submitted that – in addition to those national security justifications set forth in this Application – U.S. produced natural gas availability is equally crucial to economic security and national defense, particularly given the incentives, programs and pronouncements encouraging a switch to reliance upon U.S. produced natural gas. Accordingly, the grant of a limited waiver would advance the economic security and national defense interests where a denial would undermine those same interests (as per previous justifications for the grant of waivers).

Similarly, a denial of a limited waiver would deny Puerto Rico the ability to purchase U.S. produced natural gas and would deny the Applicants, and the citizens of Puerto Rico, of a stable, consistent and reliable source of natural gas supply which other United States citizens enjoy. A denial would also effectively deny the Applicants, and its citizens, the benefits – or full benefits – of the federal programs and incentives to which other United States' citizens have access by virtue that a Jones Act waiver is not required for their purchases of U.S. produced natural gas.

Finally, the Department of Homeland Security routinely grants waivers in instances where it has been conclusively demonstrated that there are no Jones Act eligible vessels available for transport. A denial of a limited waiver would, in fact, deny the Applicants and its citizens the benefit of a waiver under identical – and more compelling – circumstances.

Accordingly, it is respectfully submitted that a denial of a limited Jones Act waiver could implicate the Applicants', and their citizens', due process rights as guaranteed by the Fifth Amendment.

CONCLUSION

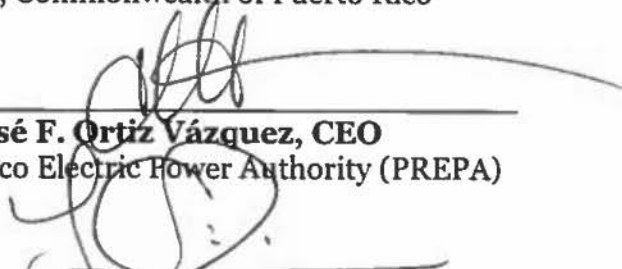
For the reasons set forth herein, the Applicants respectfully request:

- That the Secretary of the U.S. Department of Defense, or the appropriate designee, request that the U.S. Department of Homeland Security issue a limited Jones Act waiver to permit the delivery of U.S. produced natural gas to Puerto Rico for a period of ten (10) years pursuant to 46 U.S.C. § 501(a), and under such conditions as the Secretary deems necessary, because such waiver is in the best interest of the Nation's economic security and national defense; and/or
- That the Secretary of U.S. Department of Homeland Security, or the appropriate designee, issue a limited Jones Act waiver to permit the delivery of U.S. produced natural gas to Puerto Rico for a period of ten (10) years pursuant to 46 U.S.C. § 501(b), and under such conditions as the Secretary deems necessary, because such waiver is in the best interest of the Nation's economic security and national defense and otherwise satisfies all of the criteria for the granting of such waiver.

Dated: December 20, 2018



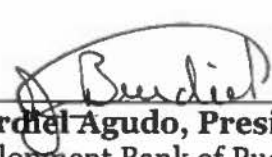
Hon. Ricardo A. Rosselló Nevares
Governor, Commonwealth of Puerto Rico



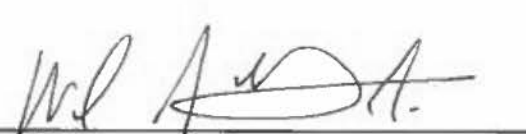
Hon. José F. Ortiz Vázquez, CEO
Puerto Rico Electric Power Authority (PREPA)



Hon. Luis Gerardo Rivera Marín
Secretary of State, Commonwealth of Puerto Rico



Hon. Luis Burdial Agudo, President
Economic Development Bank of Puerto Rico



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