Sonia Seda

From: Ruth Santiago <rstgo2@gmail.com>
Sent: Wednesday, December 6, 2023 9:25 PM
To: Comentarios
Subject: NEPR-AP-2023-0005-Propuestas enmiendas al contrato de compra de energía entre AEEPR y AES para aumentar el pago a AES y para facilitar nuevos contratos
Attachments: Carta a Negociado Energia Enmiendas al Contrato AES.docx.pdf; AES PR_NOV (2022.07.25) CAA Air MATS.pdf

Saludos,

Adjunto carta y anejo en el asunto de referencia.

Cordialmente,

--
Ruth Santiago, JD, LLM
P.O.Box 518
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787-312-2223

6 de diciembre de 2023

Negociado de Energía
San Juan, Puerto Rico

Vía correo electrónico:
comentarios@jrsp.pr.gov

Atn: Edison Avilés Deliz, Chairman

Ref: NEPR-AP-2023-0005-Propuestas enmiendas al contrato de compra de energía entre AEEPR y AES para aumentar el pago a AES y para facilitar nuevos contratos

Al Negociado de Energía:

Comparece el Comité Dialogo Ambiental, Inc., Acción Social y Protección Ambiental, Campamento Contra las Cenizas en Peñuelas, Inc., Casa Tallaboeña de Formación Comunitaria y Resiliencia, Inc., El Puente-Enlace Latino de Acción Climática, Sierra Club Puerto Rico, Coalición Anti-Incineración y Amigos del Rio Guaynabo por la representación legal que suscribe. Las organizaciones comparecientes reiteran los señalamientos y preguntas contenidas en la carta sometida el pasado 27 de noviembre de 2023 y su oposición a las llamadas enmiendas al contrato de compra de energía de AES. A pesar de que las alegadas enmiendas al contrato, incluyendo el aumento en el pago, nuevos contratos y otros beneficios a AES se haría con fondos públicos de las y los abonados de la Autoridad de Energía Eléctrica de Puerto Rico (AEEPR), aun no se divulga la cantidad del aumento en el pago propuesto y otros beneficios que se le pretenden otorgar a AES.

I. El expediente en este caso sigue incompleto e insuficiente para permitir la participación publica informada

El pasado 30 de noviembre de 2023, la AEEPR sometió algunos documentos al expediente en este caso. Los documentos nuevos que se incluyeron en el expediente repiten el patrón de los documentos anteriores de tachar la información sobre los términos de las enmiendas como la cantidad de la nueva partida que se le propone pagar a AES. Por ejemplo, en el documento titulado, “PPOA Amendment, Summary Chart”, tachan el nuevo “Energy Payment: Heat Rate”, el “Green Transition Stabilization Payment”, “Equivalent Availability Factor Penalty”, “Replenishment and Use of Escrow Funds”.

PPOA Amendments – Summary Chart

Contract Term	Existing Contract	Proposed Amendments
Expiration Date	November 2027	*N/A – no change*
Permitted Coal Ash Stored on Site	180 Days (approx. 180 thousand metric tons) or more if permitted by law	Commercially reasonable efforts to reduce pile and keep below 60 thousand metric tons through remainder of term
Environmental Compliance at End of Term	*N/A – no specific requirement*	Operator shall ensure that the Facility is properly cleaned, decommissioned, and secured at the end of the Term to the extent the Facility is not repurposed
Green Energy Commitment	*None*	Inclusion of Green Term Sheet
Energy Payment: Heat Rate	9,800 Btu / kWh	[redacted]
Capacity Payment: Demand Charge & Green Transition Stabilization Payment	Existing Demand Charge schedule: • $14 / kW-month average, 2023-2027 (reduced from $21 / kW-month average, 2013-2022)	In addition to Demand Charge, [redacted]
Equivalent Availability Factor ("EAF") Penalty	Capacity Payment penalties applied based on rolling 12-month availability factors if less than 90%	[redacted]
Replenishment & Use of Escrow Funds	$12.8 million, available for PREPA claims of damages under PPOA – released by PREPA in June 2023	Increased to [redacted] available for PREPA damages and environmental compliance at end of operational term
Minimum Cash	$10 million minimum cash plus $25 million net working capital (current assets minus current liabilities)	No change to $10 million minimum cash, removal of $25 million net working capital requirement
Damages for Breach	Each of the Operator and PREPA liable for all foreseeable damages	Clarifies that if PREPA improperly terminates the PPOA, PREPA will owe damages (i) for the orderly shutdown of the Facility and its operations; (ii) to fund the Reserve; and (iii) to repay the restructured bonds
Insurance	Facility insured for full replacement value	Agreement to negotiate a reduction of required percentage of replacement cost given limited remaining term of PPOA

Vemos como continua la omisión de anejos que se mencionan en los documentos como los planes de cierre y post cierre de AES. Los que aparecen en la pagina web de AES son "iniciales", no están actualizados y se limitan a las cenizas de la combustión de carbón.

Además, se omitieron los anejos titulados, "credit rating agency reports", "Additional Financial Information and Calculations", y "Decommissioning Cost Esimate".

El pasado 27 de noviembre de 2023, acudieron a la vista pública residentes de las comunidades afectadas por la planta de quema de carbón de AES y sus cenizas y de las fincas donde AES pretende construir proyectos de placas a escala industrial en terrenos agrícolas y representantes de varias organizaciones, incluyendo del Comité Dialogo Ambiental. El propósito de la vista era recibir comentarios públicos sobre las propuestas enmiendas al contrato de compra de energía entre AES y la AEEPR para aumentar el pago a AES y para facilitarle nuevos contratos. Dichos aumentos, de aprobarse conllevarían aumentos en la factura eléctrica de todas las residencias, comercios e industrias en Puerto Rico. A pesar del alegado propósito de recibir comentario público, se obstaculizo la entrada del público y algunas personas no entraron al salón de vistas. Por esta y otras razones mencionadas más adelante, cuestionamos si el presente proceso reúne o cumple con las condiciones para facilitar la participación pública informada y efectiva.

La convocatoria a la vista pública no atendió la envergadura del asunto del propuesto aumento en pago y los contratos para AES. La notificación de la vista fue insuficiente, no se publicó en

periódicos de circulación general y regionales, ni en medios de difusión pública en general y mucho menos a las comunidades cercanas a la planta y los proyectos propuestos por AES.

Una sola vista en un lugar inaccesible o de difícil acceso, lejos de donde se proponen las acciones que afectaran a las comunidades y para un asunto que compromete cientos de millones de dólares en fondos públicos no cumple con brindar oportunidad de participación pública.

Los documentos en el expediente están incompletos y tachados y faltan casi todos los anejos. Por ejemplo, los documentos no indican cuanto será el aumento en el propuesto pago adicional de fondos públicos a AES.

La fecha límite para someter comentarios escritos es muy corta. Reiteramos la solicitud de una extensión del término hasta enero 2024 y luego de recibir documentos completos, sin tachaduras y con los anejos correspondientes.

La poca información en los documentos no permite conocer que se planifica con la planta. El pueblo de Puerto Rico, incluyendo las comunidades afectadas por la planta de quema de carbón de AES tienen derecho a conocer que va a pasar con la planta y como se podrían afectar con los proyectos de paneles solares a escala industrial propuestos por AES en los terrenos cercanos.

AES no se puede esconder tras el velo de la confidencialidad porque las enmiendas propuestas pasaron de la etapa deliberativa al someterse para la aprobación de este Negociado. No se trata de secreto de negocios porque a AES se le paga con fondos públicos. No pueden alegar que sea información sobre infraestructura energética critica porque se trata de disposiciones contractuales sobre pagos y los términos de los nuevos contratos propuestos.

Hay mucha falta de acceso a la información y falta de transparencia en este proceso. En fin, este proceso no ofrece las condiciones para una participación pública informada y efectiva.

Solicitamos que el Negociado brinde acceso a la información para permitir una participación pública efectiva.

La ciudadanía de Puerto Rico tiene un derecho constitucional a la información sobre la red eléctrica. Dávila v. Superintendente General de Elecciones, 82 D.P.R. 264, 281 n.9 (1960) ("No basta con que se reconozca meramente la importante justificación política de la libertad de información. Los ciudadanos de una sociedad que se gobierna a sí misma deben poseer el derecho legal de examinar e investigar cómo se conducen sus asuntos, sujetos sólo a aquellas limitaciones que impone la más urgente necesidad pública. Debe elevarse ese derecho a una posición de la más alta santidad si ha de constituir un baluarte contra un liderato insensible." A través del proceso de aprobación de la Ley 17-2019, la "Ley de Política Pública Energética de Puerto Rico", la Asamblea Legislativa afirmó un compromiso con la transparencia. 22 L.P.R.A. §§ 1051(o), 1051a(hh). La transparencia requerida por la reglamentación del Negociado de Energía debe ser consistente con la ley de Puerto Rico, que ordena al Negociado de Energía estructurar cualquier restricción de acceso público a la información "de la manera que menos afecte el interés público, la transparencia y los derechos de las partes involucradas en el procedimiento administrativo" y permite que los documentos se mantengan "fuera del alcance del público sólo en casos excepcionales". 22 L.P.R.A. § 1054n(a), (c). Incluso en los "casos excepcionales" en los que el Negociado de Energía puede aplicar restricciones de confidencialidad a los documentos sometidos a sus procedimientos, la ley de Puerto Rico establece que una vez que las partes hayan firmado un acuerdo de confidencialidad, el

Negociado de Energía proporcionará acceso al documento o a la persona. . . . a los abogados y asesores externos involucrados en el proceso administrativo. 22 L.P.R.A. § 1054n(b). Entendemos que la información sobre los contratos con AES no es un caso excepcional y los documentos deben estar disponibles al publico sin requerir acuerdos de confidencialidad.
La Ley 57-2014 declara que la transparencia y la participación ciudadana son vitales en los procesos relacionados con el servicio energético. Para garantizar la transparencia que busca promover, la ley establece sus "Principios de Transparencia y Rendición de Cuentas" los cuales dictan: De conformidad con la política pública establecida en el Artículo 1.2 de esta Ley, toda información, datos, demanda entregada, estadísticas, informes, planes , y los documentos recibidos y/o divulgados por cualquiera de estas entidades creadas al amparo de esta Ley, la Autoridad, su sucesora, el Contratista de la red de transmisión y distribución y toda compañía de energía eléctrica estarán sujetos a los siguientes principios: […] (7) Los datos producidos por empleados, funcionarios o contratistas que trabajen para el Estado Libre Asociado de Puerto Rico no estarán sujetos a derechos de autor, patentes, marcas comerciales o secretos comerciales. Pueden aplicarse restricciones razonables basadas en doctrinas de privacidad, seguridad y privilegios probatorios; y (8) Dichos datos estarán disponibles en formato no propietario; es decir, nadie tendrá control exclusivo sobre él.

La información en el expediente sobre los aumentos y contratos solicitados por AES están tachadas u omitidas al amparo de la confidencialidad. Muchos elementos medulares se están ocultando al público, como el aumento de los costos a las y los abonados debido a las propuestas de AES y la acumulación y manejo de las cenizas de carbón. Los reclamos de confidencialidad en este caso son demasiado amplios y no permiten el acceso a la información pública ni la participación pública informada o efectiva en este procedimiento. Las llamadas enmiendas propuestas al contrato de AES se le han presentado al Negociado para su aprobación, lo que indica que las enmiendas propuestas ya no son deliberativas. Además, el hecho de que las modificaciones impliquen el uso y compromisos de fondos públicos requiere un mayor nivel de transparencia y acceso a la información pública. Todos los anejos a los documentos en este expediente deben estar disponibles para revisión pública.

Por lo tanto, solicitamos que el Negociado de Energía proporcione rápidamente copias no tachadas/redactadas de todos los documentos en el expediente y conceda un término de 30 días al público luego de facilitada la información para someter comentarios.

El 29 de noviembre de 2023, se sometió una carta objetando el proceso y una petición firmada por decenas de residentes de las comunidades cercanas a la planta de quema de carbón de AES y de las fincas donde AES propone construir proyectos de paneles solares a escala industrial en terrenos agrícolas. Omitieron incluir en el expediente de este caso la Notificación de Violaciones (NOV) de EPA a AES que sometió el Comité Dialogo Ambiental anteriormente, por lo que se vuelve a incluir como anejo a esta carta.

II. El negocio propuesto para beneficiar a AES viola las disposiciones legales aplicables

El negocio propuesto viola la Ley de Transformación y Alivio Energético, Ley 57-2014, artículo 6.32(a) al acordar las llamadas "enmiendas" al contrato vigente- lo cual en realidad equivale a un

nuevo contrato-con nuevas obligaciones- marco de un contrato totalmente distinto denominado "Green PPOA". No se ha descargado la responsabilidad de demostrar que las llamadas "enmiendas" al contrato existente/ "Power Purchase and Operation Agreement" (PPOA) cumplen con las disposiciones del artículo 6.32 de la Ley 57-2014, según enmendada. Este requiere demostrar que las tarifas y otras condiciones sean justas, protegen el interés y al erario público y se cumplan otros requisitos ahí enumerados incluyendo un "Estudio Suplementario" de interconexión. Nótese que todos los requerimientos de dicho artículo son plenamente aplicables a la consideración de las llamadas "enmiendas" al contrato existente/PPOA no solamente porque así lo dispone su inciso (b), cosa que admite la AEEPR, sino porque estamos en realidad ante un nuevo contrato que a su vez encierra otro, a saber, el "Green PPOA" , cuyos términos generales ya fueron negociados, SIN la previa autorización de este Negociado, ni el previo cumplimiento con las disposiciones del artículo 6.32.

Este Negociado debe rechazar la petición pues las propuestas "enmiendas" al PPOA tienen el grave peligro de comprometer a la AEEPR, y por ende, a todos los usuarios de electricidad, a las gestiones de cumplimiento y limpieza ambiental por las condiciones que ha dejado y siguen dejando las operaciones de AES. Véase por ejemplo pags.1, 2 y 6 de las llamadas enmiendas.

El Negociado debe también sopesar que las "enmiendas" exponen a la AEEPR a cuantiosos pagos y hasta el pago de las deudas de AES. Ver nueva sección 14.2, página 8 e incorporación de definiciones. En efecto, la AEEPR ha sido adherida al "Restructuring Support Agreement" (RSA) de AES mediante dichas "enmiendas" con graves consecuencias potenciales para el pueblo de PR.

También se contempla que la operación de la planta de la AES pase a manos de otra compañía eléctrica sin la previa aprobación de este Negociado. Véase nueva sección 8.12 , pag.7 de las alegadas enmiendas.

Debido a las muy serias y complejas implicaciones de la decisión ante sí, este Negociado debe rechazar las enmiendas solicitadas o en todo caso invocar el inciso (e) del artículo 6.32 y detener la evaluación de estas y a su vez otorgar plena oportunidad al público para conocer y expresarse sobre ellas.

Los documentos en el expediente no reflejan todas las enmiendas anteriores que se han hecho al contrato existente. En las llamadas enmiendas se alega falsamente que la planta de AES-PR produce 454 megavatios de energía. A través de una enmienda anterior al contrato existente, AES aumentó la capacidad instalada a 524 MW. Eso es 70 MW adicionales de capacidad de generación y la cantidad correspondiente de desechos de cenizas de carbón adicionales.

El "PPOA Amendment, Summary Chart" le impone posibles responsabilidades adicionales a la AEEPR con relación a terminación del contrato que no estaban en el contrato anterior y que incluyen los costos del cierre de la planta de AES, el fondo de Reserva y el pago de los nuevos bonos reestructurados de AES. También, las alegadas enmiendas proponen bajar la cantidad de seguro requerido a AES.

Además, las propuestas enmiendas le restan responsabilidades a AES. Por ejemplo, solo se requiere que AES realice esfuerzos "comercialmente razonables" para reducir la acumulación de cenizas a 60,000 toneladas contrario a la disposición en el contrato vigente que requiere remoción de las cenizas. La Ley 40-2017 requiere inequívocamente que las cenizas de carbón sean retiradas del archipiélago dentro de los 180 días siguientes a su creación. Se prohíbe el almacenamiento de cenizas de carbón o residuos de combustión de carbón dentro del territorio de Puerto Rico por más de ciento ochenta (180) días después de la generación de las mismas. Por esa razón, el Artículo 6.6 incluye el reconocimiento de AES de que las cenizas de carbón no pueden almacenarse en ningún lugar del archipiélago durante más de 180 días, ni eliminarse en ningún lugar del archipiélago ni de sus aguas. AES propone agregar una enmienda al Artículo 6.6 que crea un umbral más bajo, que protege menos la salud y seguridad de los puertorriqueños:

"esfuerzos comercialmente razonables para acelerar la reducción de [cenizas de carbón] almacenadas en la... instalación por debajo de 60 mil toneladas métricas para el 31 de diciembre de 2026 y... posteriormente, utilizar esfuerzos comercialmente razonables para mantener por debajo de 60 mil toneladas métricas de [cenizas de carbón] almacenadas en la... Instalación durante el plazo restante".

AES ha inventado una nueva norma que incumple la Ley 40-2017. Las secciones del contrato que no cumplen con las leyes de Puerto Rico son nulas y sin valor, y de hecho sujetan todo el contrato a impugnación legal.

III. Información necesaria para la transparencia y la justicia procesal

Ante la falta de acceso a información y de justicia procesal las organizaciones comparecientes someten preguntas que esperamos sean atendidas por el Negociado antes de tomar una decisión sobre el aumento en el pago a AES y facilitar los nuevos contratos para beneficiar a AES.

¿AES se ha ganado el aumento del pago solicitado? ¿Es una corporación que cumple con las leyes? ¿Es confiable?

AES tiene un largo historial de incumplimiento de con múltiples disposiciones legales, incluyendo contaminación de aire, suelos y agua. Solicitamos que este Negociado tome conocimiento oficial de las violaciones e incumplimientos de disposiciones ambientales de AES que han sido ampliamente cubiertos por los medios noticiosos y obran en los expedientes de la Agencia de Protección Ambiental (EPA) y el Departamento de Recursos Naturalles y Ambientales (DRNA) y del propio Negociado, incluyendo el expediente del Plan Integrado de Recursos. Adjunto documentación que resume algunas de las referidas violaciones de ley por parte de AES.

Recientemente, la EPA documentó la radioactividad de los residuos de combustión de carbón y el riesgo a la salud publica cuando las cenizas se usan como material de relleno como se hizo en Puerto Rico:

> EPA also concludes that the unmonitored accumulation of CCR in surface and subsurface soils has the potential to result in risk to future receptors in the range OLEM typically considers for regulation. These risks are driven by exposure to gamma radiation from

> radium and its decay products, and incidental ingestion of arsenic and radium in soil and dust. Health effects associated with exposure to radium include increased risk of several types of cancer, particularly lung and bone cancer. EPA-HQ-OLEM-2020-0107-0887_content RA.pdf, P.7-3

¿Se le va a requerir a AES a responder por los danos ocasionados por más de dos millones de toneladas de sus cenizas que se han usado como material de relleno en Guayama, Salinas, Arroyo, Santa Isabel y otros diez municipios?

¿Este Negociado va a verificar el desempeño de AES bajo el contrato existente, va a realizar "due diligence"?

Vemos como la compañía principal, AES Corporation esta repartiendole dividendos a sus accionistas lo cual indica las ganancias de sus operaciones. ¿Este Negociado va a escrudiñar los pagos o transferencias de fondos entre las compañías afiliadas como AES Corporation?

¿Este Negociado va a requerir prueba de la alegada insolvencia de AES y como alegadamente se drenaron sus finanzas?

¿Cuál es la alegada justificación para el aumento del pago/la nueva partida a pagar a AES?

¿Si el aumento en pago es para incentivar que AES construya proyectos de energía solar a escala industrial en terrenos, se estaría incurriendo en doble pago porque ya se pactaron pagos a AES bajo los contratos de compra de energía? ¿Seria proveerle ventaja a AES porque las otras compañías que licitaron para los proyectos de paneles a escala industrial en terrenos no tendrían ese pago adicional?

¿El aumento y la nueva partida de pagos (Green Transition Stabilization Payment) es para cubrir los gastos del manejo y exportación de las cenizas y residuos de la quema de carbón? Tampoco procedería porque desde un inicio en la Declaración de Impacto Ambiental, la Consulta de Ubicación y el propio contrato existente, AES se comprometió a exportar las cenizas si no se desarrollaba un mercado para sus cenizas en Puerto Rico.

¿Cuáles son los términos del nuevo contrato conocido como, "Green PPOA" con AES?

¿Cuál es la magnitud del aumento propuesto y como esto impactaría la tarifa eléctrica en Puerto Rico considerando que AES alega que suple el 25% de la energía?

¿Si múltiples estudios demuestran que la resiliencia energética se logra con sistemas de placas solares en techos y baterías, se serviría mejor el interés público si el gobierno invierte el dinero que le paga a AES y el aumento propuesto en suplir sistemas solares con baterías a los residentes de bajos ingresos, los pequeños negocios y las instituciones como las escuelas y las plantas de infraestructura de agua?

¿La aprobación de las enmiendas para aumentarle el pago a AES sería un rescate o "bailout" a un conglomerado sofisticado con experiencia amplia en la contratación?

¿Si se le facilitan contratos adicionales a AES que impediría que AES nuevamente alegue dificultades económicas y exija más dinero? ¿Que propone este Negociado para evitar que Puerto Rico siga siendo rehén de AES?

¿Considerando que el gobernador Pierluisi fue abogado de AES, como este Negociado propone evitar la influencia indebida en la adjudicación de la solicitud de aumento de pago a AES y facilitar nuevos negocios y contratos con AES?

Cordialmente,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

AES Puerto Rico, LP
Guayama, Puerto Rico,

Respondent,

In a proceeding under Section 113(a)(3)
of the Clean Air Act, 42 U.S.C. § 7413(a)(3)

NOTICE OF VIOLATION
CAA-02-2022-1302

SUMMARY

The United States Environmental Protection Agency ("EPA") Region 2 Director of the Caribbean Environmental Protection Division ("CEPD Director") issues this Notice of Violation ("NOV"), consistent with Section 113(a)(1) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a)(1), to AES Puerto Rico, LP ("AES" or "Respondent"), the owner and operator of a coal-fired power generating facility located at PR-3 Km. 142.0, Jobos Ward, in the municipality of Guayama, Puerto Rico (the "Facility"). This NOV identifies violations of the Puerto Rico Regulations for the Control of Atmospheric Pollution, which are part of the federally enforceable CAA State Implementation Plan. This NOV also identifies, as a courtesy, violations of Title V of the CAA and its implementing regulations at 40 C.F.R. Part 70, violations of the Prevention of Significant Deterioration ("PSD") regulations at 40 C.F.R. § 52.21, and violations of 40 C.F.R. Part 63 Subpart UUUUU – the National Emission Standards for Hazardous Air Pollutants from Coal-and Oil-fired Electric Utility Steam Generating Units, commonly referred to as the "Mercury and Air Toxics Standards" or "MATS," although the EPA is not required by law to issue an NOV for such violations.

STATUTORY, REGULATORY, AND PERMITTING BACKGROUND

1. Section 302(e) of the Act, 42 U.S.C. § 7602(e), provides that the term "person" includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

2. Section 109 of the CAA directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards ("NAAQS") for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act. *See* 42 U.S.C. § 7409.

3. Section 110(a)(1) of the CAA requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans, or SIPs. *See* 42 U.S.C. § 7410(a)(1).

4. SIPs are federally enforceable pursuant to Sections 113(a) and (b) of the Act. *See* 42 U.S.C. §§ 7413(a) and (b).

5. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides, in relevant part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a SIP, the Administrator shall notify the person and the state in which the SIP applies of such finding. Section 113(a)(1) further provides that 30 days after providing such notice, the EPA Administrator may take various actions to address the violation(s).

6. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to, among other actions, issue an administrative penalty order or bring a civil action against any person whenever, on the basis of any information available to the EPA, the Administrator finds that such person has violated or is in violation of any requirement or prohibition of Title I of the Act, or of any regulation promulgated pursuant to Section 112 of the Act, 42 U.S.C. § 7412.

7. Section 114 of the Act, 42 U.S.C. § 7414, authorizes the EPA Administrator to require sampling of emissions, monitoring, record-keeping, and reporting of information, among other things, to enable him or her to carry out any provision of the Act (except certain provisions in Title II) and to assess compliance with, among other requirements, any regulations promulgated under Section 112 of the Act, 42 U.S.C. § 7412.

8. The CEPD Director is authorized by the EPA Administrator through the EPA Region 2 Regional Administrator to make findings of violations, issue notices thereof, and gather information, pursuant to Sections 113 and 114 of the Act. *See* EPA Delegation of Authority 7-6-A; EPA Region 2 Delegation of Authority 7-6-A; EPA Delegation of Authority 7-8; EPA Region 2 Delegation of Authority 7-8.

CAA Section 112

9. Section 112(a) of the Act, 42 U.S.C. § 7412(a), contains the following relevant definitions:

    a. "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of

hazardous air pollutants. CAA Section 112(a)(1), 42 U.S.C. § 7412(a)(1).

b. "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. CAA Sections 112(a)(3); 111(a)(3), 42 U.S.C. §§ 7412(a)(3); 7411(a)(3).

c. "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source. CAA Section 112(a)(4), 42 U.S.C. § 7412(a)(4).

d. "hazardous air pollutant" means any air pollutant listed pursuant to Section 112(b) of the Act. CAA Section 112(a)(6), 42 U.S.C. § 7412(a)(6).

e. "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. CAA Section 112(a)(9), 42 U.S.C. § 7412(a)(9).

f. "existing source" means any stationary source other than a new source. CAA Section 112(a)(10), 42 U.S.C. § 7412(a)(10).

10. Section 112 of the Act requires the EPA Administrator to: (i) periodically review and revise the initial list of hazardous air pollutants ("HAPs") identified by the Congress, (ii) publish and revise a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory. 42 U.S.C. §§ 7412(b)(1), (2); (c)(1), (2).

11. Emission standards promulgated pursuant to Section 112 are commonly known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs"). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990

are set forth in 40 C.F.R. Part 63. 40 C.F.R. Part 63 NESHAPs are sometimes known as maximum achievable control technology ("MACT") standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the MACT. 42 U.S.C. § 7412(d)(2).

NESHAPs for Coal-and Oil-fired Electric Utility Steam Generating Units (the "Mercury and Air Toxics Standards" or "MATS)

12. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the "National Emission Standards for Hazardous Air Pollutants from Coal-and Oil-fired Electric Steam Generating Units ("EGU") and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." 77 Fed. Reg. 9304 (Feb. 16, 2012) (the "MATS rule"). The MATS rule is codified at 40 C.F.R. Part 63 Subpart UUUUU[1] and became effective on April 16, 2012.

13. 40 C.F.R. § 63.9981 provides that anyone who owns or operates an EGU as defined in 40 C.F.R. § 63.10042, *i.e.,* "a fossil fuel-fired combustion unit of more than 25 megawatts electric ("MWe") that serves a generator that produces electricity for sale," is subject to the MATS rule.

14. Pursuant to 40 C.F.R. § 63.9991(a)(1), the owner or operator of a unit subject to the MATS rule must meet the applicable emission limits and work practice standards in Tables 1 through 3 of the MATS rule for each EGU.

15. Pursuant to 40 C.F.R. § 63.10000(a), the owner or operator of a MATS unit must be in compliance with the MATS emission and operating limits, which apply at all times,

[1] MATS rulemaking summary, history, and resources can be found in the following link: https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards

except during periods of startup and shutdown. MATS units must also meet the work practice requirements for periods of startup or shutdown identified in Table 3 of the MATS rule.

16. Pursuant to 40 C.F.R. § 63.10000(b), the owner or operator of a MATS unit must operate and maintain at all times, any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the EPA Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

17. Pursuant to 40 C.F.R. § 63.10000(c)(1), initial performance testing for coal-fired units is required for all pollutants, to demonstrate compliance with the applicable emission limits.

18. 40 C.F.R. § 63.10000(c)(1)(vi) establishes that coal-fired EGUs that do not qualify as low-emitting EGUs ("LEE") for mercury ("Hg") must demonstrate initial and continuous compliance through the use of a Hg Continuous Emission Monitoring System ("CEMS") or a sorbent trap monitoring system, in accordance with Appendix A of the MATS rule.

19. Pursuant to 40 C.F.R. § 63.10000(d)(1), if an owner or operator demonstrates compliance with any applicable emissions limit through use of a continuous monitoring system ("CMS"), where a CMS includes a continuous parameter monitoring system ("CPMS") as well as a CEMS, the owner or operator must develop a site-specific monitoring plan, and submit it if requested, at least 60 days before the initial performance evaluation (where applicable) of the CMS.

20. Pursuant to 40 C.F.R. §§ 63.10000(d)(2) and (d)(5), a site-specific monitoring plan shall include the following information:

a. Installation of the CMS or sorbent trap monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

b. Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems.

c. Schedule for conducting initial and periodic performance evaluations.

d. Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations), including the quality control program in accordance with the general requirements of 40 C.F.R. § 63.8(d).

e. Ongoing operation and maintenance procedures, in accordance with the general requirements of 40 C.F.R. §§ 63.8(c)(1)(ii), (c)(3), and (c)(4)(ii).

f. Conditions that define a CMS that is out of control consistent with 40 C.F.R. § 63.8(c)(7)(i) where appropriate, and for responding to out-of-control periods consistent with 40 C.F.R. §§ 63.8(c)(7)(ii) and (c)(8).

g. Ongoing recordkeeping and reporting procedures, in accordance with the general requirements of 40 C.F.R. §§ 63.10(c), (e)(1), and (e)(2)(i), or as specifically required by the MATS rule.

21. Alternatively, the site-specific monitoring plan requirements are considered to be met for a particular CMS or sorbent trap monitoring system if:

(i) The CMS or sorbent trap monitoring system is installed, certified, maintained, operated, and quality-assured either according to 40 C.F.R. Part 75, or Appendix A or B of the MATS rule; and

(ii) The recordkeeping and reporting requirements of 40 C.F.R. Part 75 or Appendix A or B of the MATS rule that pertain to the CMS are met.

22. Pursuant to 40 C.F.R. § 63.10006(c), coal-fired EGUs without a particulate matter ("PM") CEMS or CPMS must conduct all applicable periodic emissions tests for filterable PM, individual, or total HAP metals emissions according to Table 5 of the MATS rule, 40 C.F.R. §§ 63.10007 and 63.10000(c).

23. Pursuant to 40 C.F.R. § 63.10006(d), coal-fired EGUs that do not use either an HCl CEMS to monitor compliance with the HCl limit or an SO_2 CEMS to monitor compliance with the alternate equivalent SO_2 emission limit, the owner or operator must conduct all applicable periodic HCl emissions tests according to Table 5 of the MATS rule, and 40 C.F.R. § 63.10007, at least quarterly.

24. Pursuant to 40 C.F.R. § 63.10010(b), if the owner or operators uses an oxygen (O_2) or carbon dioxide (CO_2) CEMS to convert measured pollutant concentrations to the units of the applicable emissions limit, the O_2 or CO_2 concentrations shall be monitored at a location that represents emissions to the atmosphere, *i.e.,* at the outlet of the EGU, downstream of all emission control devices. The owner or operator must install, certify, maintain, and operate the CEMS according to part 75 of the MATS rule. Only quality-assured O_2 or CO_2 data in the emissions calculations shall be used.

25. Pursuant to 40 C.F.R. § 63.10010(c), if an owner or operator is required to use a stack gas flow rate monitor, either for routine operation of a sorbent trap monitoring system, or to

convert pollutant concentrations to units of an electrical output-based emission standard in Table 1 or 2 of the MATS rule, it must install, certify, operate, and maintain the monitoring system and conduct on-going quality-assurance testing of the system according to part 75 of the MATS rule. Only unadjusted, quality-assured flow rate data in the emissions calculations shall be used. Bias adjustment factors to the flow rate data shall not be applied, and the use of substitute flow rate data in the calculations is not permitted.

26. Pursuant to 40 C.F.R. § 63.10010(g), if an owner or operator uses a mercury CEMS or a sorbent trap monitoring system, it must install, certify, operate, maintain and quality-assure the data from the monitoring system in accordance with Appendix A to the MATS rule. The owner or operator must calculate and record a 30- (or, if alternate emissions averaging is used, 90-) boiler operating day rolling average Hg emission rate, in units of the standard, updated after each new boiler operating day. Each 30- (or, if alternate emissions averaging is used, 90-) boiler operating day rolling average emission rate, calculated according to section 6.2 of Appendix A to the MATS rule, is the average of all of the valid hourly Hg emission rates in the preceding 30- (or, if alternate emissions averaging is used, a 90-) boiler operating days. Section 7.1.4.3 of Appendix A to the MATS rule explains how to reduce sorbent trap monitoring system data to an hourly basis.

27. Pursuant to 40 C.F.R. § 63.10020(d), periods of monitoring system malfunctions or monitoring system out-of-control periods, repairs associated with monitoring system malfunctions or monitoring system out-of-control periods, and required monitoring system quality assurance or quality control activities excluding zero and span checks must be reported at time the monitor was inoperative (downtime). Failure to collect required quality-assured data during monitoring system malfunctions, monitoring system out-of-control periods, or repairs

associated with monitoring system malfunctions or monitoring system out-of-control periods is a deviation from the monitoring requirements.

28. Pursuant to 40 C.F.R. § 63.10021(b), if an owner or operator uses a CEMS to measure SO_2, PM, HCl, HF, or Hg emissions, or a sorbent trap monitoring system to measure Hg emissions, it must demonstrate continuous compliance by using all quality-assured hourly data recorded by the CEMS (or sorbent trap monitoring system) and the other required monitoring systems (e.g., flow rate, CO_2, O_2, or moisture systems) to calculate the arithmetic average emissions rate in units of the standard on a continuous 30-boiler operating day (or, if alternate emissions averaging is used for Hg, 90-boiler operating day) rolling average basis, updated at the end of each new boiler operating day. Use Equation 8 to determine the 30- (or, if applicable, 90-) boiler operating day rolling average.

29. Pursuant to 40 C.F.R. § 63.10031(a)(1), if an owner or operator is required to (or elects to) monitor Hg emissions continuously, it must meet the electronic reporting requirements of Appendix A to the MATS rule, which requires using the Emissions Collection and Monitoring Plan System ("ECMPS") Client Tool to submit electronic reports to the EPA.

30. Pursuant to 40 C.F.R. § 63.10031(b), semi-annual compliance reports must be submitted according to the following requirements:

a. The first compliance report must cover the period beginning on the compliance date that is specified for the affected source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved under 40 C.F.R. § 63.6(i)(4)) and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days after the compliance date that is specified for the source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved

under 40 C.F.R. § 63.6(i)(4)).

b. The first compliance report must be submitted electronically no later than July 31 or January 31, whichever date is the first date following the end of the first six months of the calendar year after the compliance date that is specified for the source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved under 40 C.F.R. § 63.6(i)(4)).

c. Each subsequent compliance report must cover the semi-annual reporting period from January 1 through June 30 or the semi-annual reporting period from July 1 through December 31.

d. Each subsequent compliance report must be submitted electronically no later than July 31 or January 31, whichever date is the first date following the end of the semi-annual reporting period.

31. Pursuant to 40 C.F.R. § 63.10031(d), for EGUs whose owners or operators rely on a CMS to comply with an emissions or operating limit, the semi-annual compliance reports described in 40 C.F.R. § 63.10031(c) must include the excess emissions and monitor the downtime summary report described in 40 C.F.R. § 63.10(e)(3)(vi). If there were no deviations, the owner or operator must include a statement to that effect in the quarterly compliance report.

32. Pursuant to 40 C.F.R. § 63.10031(f), for each performance stack test completed prior to January 1, 2024, the owner or operator must submit a test report in a portable document format ("PDF") in accordance with 40 C.F.R. § 63.10031(f)(6), no later than 60 days after the date on which the testing is completed.

33. Pursuant to 40 C.F.R. § 63.10031(f)(1), for each Relative Accuracy Test Audits ("RATA") of an Hg, HCl, HF, or SO_2 monitoring system completed prior to January 1, 2024, the

owner or operator must submit a PDF test report in accordance with 40 C.F.R. § 63.10031(f)(6), no later than 60 days after the date on which the test is completed.

34. Pursuant to 40 C.F.R. § 63.10031(f)(4), the owner or operator must submit semi-annual compliance reports as required under 40 C.F.R. § 63.10031(b) through (d), ending with a report covering the semi-annual period from July 1 through December 31, 2023, and Notifications of Compliance Status as required under 40 C.F.R. § 63.10030(e), as PDF files.

35. Pursuant to 40 C.F.R. § 63.10031(f)(6), all reports and notifications described in 40 C.F.R. § 63.10031(f)(1) and (4) must be sent to the EPA in the specified format and the specified frequency, using the ECMPS Client Tool.

36. Pursuant to 40 C.F.R. § 63.10032(a), the owner or operator must keep records according to paragraphs (a) and (b) below. If the owner or operator is required to (or elects to) continuously monitor Hg and/or HCl and/or HF and/or PM emissions, or if it elects to use a PM CPMS, it must keep the records required under Appendices A, B, C, and/or D to the MATS rule. It must also keep records of all data elements and other information in Appendix E to the MATS rule that apply to its compliance strategy.

a. In accordance with 40 C.F.R. § 63.10(b)(2)(xiv), a copy of each notification or report that the owner or operator submits to comply with the MATS rule. It must also keep records of all supporting documentation for the initial Notifications of Compliance Status, semi-annual compliance reports, or quarterly compliance reports that it submits.

b. Records of performance stack tests, fuel analyses, or other compliance demonstrations and performance evaluations, as required in 40 C.F.R. § 63.10(b)(2)(viii).

37. Pursuant to 40 C.F.R. § 63.10032(c), the owner or operator must keep the records required in Table 7 of the MATS rule, including records of all monitoring data and calculated averages for applicable PM CPMS operating limits to show continuous compliance with each emission limit and operating limit that applies to the source.

38. Pursuant to 40 C.F.R. § 63.10032(h), the owner or operator must keep records of actions taken during periods of malfunction to minimize emissions in accordance with 40 C.F.R. § 63.10000(b), including corrective actions to restore the air pollution control and monitoring equipment to its normal or usual manner of operation.

Prevention of Significant Deterioration

39. On June 19, 1978, EPA promulgated regulations pursuant to Part C of Title I of the Act, "Prevention of Significant Deterioration of Air Quality" ("PSD"). *See* 43 Fed. Reg. 26403 (June 19, 1978).

40. The PSD provisions of Part C of Title I of the Act establish specific requirements applicable to the construction and modification of sources located in areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. *See* 42 U.S.C. §§ 7470-7492. These statutory provisions and their implementing regulations at 40 C.F.R. § 52.21, collectively known as the "PSD program," provide that if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. The source must comply with all of the conditions of a PSD permit issued pursuant to 40 C.F.R. § 52.21.

41. 40 C.F.R. § 52.21(a)(1) provides that the PSD regulations apply to any SIP which has been disapproved with respect to prevention of significant deterioration of air quality in

any portion of any state that is in attainment with the applicable NAAQS.

42. Pursuant to Sections 110 and 161 of the Act, EPA (1) disapproved Puerto Rico's prevention of significant deterioration of air quality rules, and (2) incorporated by reference, and made part of the applicable Puerto Rico SIP, the provisions at 40 C.F.R. §§ 52.21(a)(2) through (w). See 40 C.F.R. §§ 52.2720 through 52.2732; 62 Fed. Reg. 3211, 3213 (January 22, 1997); 68 Fed. Reg. 74491 (Dec. 24, 2003); 42 U.S.C. §§ 7410, 7471.

Clean Air Act Title V Operating Permit

43. Title V of the Act ("Title V") consists of CAA Sections 501 to 507, 42 U.S.C. §§ 7661-7661f.

44. In general, Title V requires each "major source" to obtain an operating permit setting forth all the air pollution requirements that apply to that source; Title V also provides for the creation of state and federal programs to issue such permits.

45. Section 501 of the CAA, 42 U.S.C. § 7661(2), defines a "major source," as used in Title V, as any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act, Section 302 of the Act, or Part D of Subchapter I of the Act.

46. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), makes unlawful the operation of any source subject to Title V, except operation in compliance with a permit issued by a permitting authority pursuant to Title V.

47. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), requires EPA to promulgate regulations establishing the minimum elements of a Title V operating permit program; it also sets forth the procedures by which EPA would approve, oversee, and withdraw approval of state operating permit programs.

48. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires each state to develop and submit to EPA a permit program meeting the requirements of Title V.

49. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.

50. On July 21, 1992, pursuant to CAA Section 502(b), EPA promulgated 40 C.F.R. Part 70 ("Part 70"), which governs state operating permit programs. *See* 57 Fed. Reg. 32295 (July. 21, 1992).

51. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), and 40 C.F.R. § 70.4 require each state to submit a permitting program, developed in accordance with Part 70, to EPA for approval. States are authorized to administer their own EPA-approved Title V operating permit programs.

52. On November 14, 1995, the EPA granted interim approval (60 Fed. Reg. 57204), and effective March 27, 1996, the EPA granted final full approval of the Commonwealth of Puerto Rico's Title V Operating Permit Program (61 Fed. Reg. 7073, Feb. 26, 1996).

53. The Puerto Rico Title V Facility Permit Regulations, located at Part VI of the Puerto Rico Regulations for the Control of Atmospheric Pollution ("RCAP"), implement numerous requirements of the CAA, and apply to, among other things, any "major source." RCAP Rule 601.

Commonwealth of Puerto Rico Regulations for the Control of Atmospheric Pollution

54. Pursuant to the Puerto Rico Environmental Public Policy Act Law No. 9 of June 18, 1970,[2] the Puerto Rico Environmental Quality Board ("EQB") developed the Puerto Rico RCAP.

[2] Repealed and superseded by Act No. 416 of September 22, 2004.

55. By virtue of Law No. 122 of December 18, 2017, EQB's functions, services, programs, and/or powers were transferred to the Puerto Rico Department of Natural and Environmental Resources ("DNER").[3]

56. On January 22, 1997, the EPA approved DNER's RCAP, as submitted to the EPA on September 29, 1995, as part of the federally approved SIP for the Commonwealth of Puerto Rico. 62 Fed. Reg. 3211 (Jan. 22, 1997).

57. RCAP Rule 403(A)(1) establishes that no person shall cause or permit the emission of visible air pollutants of an opacity greater than 20 percent (6-minute average).

58. RCAP Rule 410(F) and Section V.B of the Title V permit establish that the owner or operator of the source shall submit a monthly report indicating on a daily basis the sulfur content in the fuels burned or combusted by such source during the reporting period, including all other information as may be required by the DNER.

59. RCAP Rule 602(c)(2)(ix)(C) and Section III.7 of the Title V permit establish that an annual compliance certification must be submitted to both the DNER and the EPA no later than April 1 of each year covering the previous calendar year.

60. RCAP Rule 603(a)(5)(i) and Section III.15 of the Title V permit establish that any required monitoring reports must be submitted to the DNER at least every six months, October 1 and April 1 of every year, or more frequently if required by the underlying applicable requirement. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official.

[3] All actions taken by the EQB prior to December 18, 2017 will be referenced as actions taken by the DNER.

FINDINGS OF FACT

The following findings of fact are based on a review of Facility records and inspection of the Facility performed by the EPA in December 2021:

61. Respondent owns and operates the Facility, which has been in operation since 2002.

62. The Facility produces approximately 454 MW of net electricity, which is sold to LUMA Energy (Puerto Rico's electrical transmission and distribution lines operator). The main process emission units consist of two 227 MW (net, each) bituminous coal-fired circulating fluidized bed boilers ("CFB") with cyclones, which supply superheated steam to two extraction/condensing turbines to drive electric generators. The two boilers have a combined maximum heat input rate of 4,922.7 MMBtu/hr. The emissions are controlled through the use of the CFB and a circulating dry scrubber with limestone and lime injection, respectively, for SO_2 control, a dry electrostatic precipitator for PM control, and a selective non-catalytic reduction system using urea for additional nitrogen oxides (NOx) control. The CFB have two individual stacks with CEMS for NOx, SO_2, carbon monoxide (CO), O_2, and CO_2, and a Flow Rate Monitoring System for exhaust gas volumetric flow rate, as well as a Sorbent Trap Monitoring System for Hg and a Continuous Opacity Emissions Monitoring System.

63. The Facility operates under a Title V permit (Permit No. PFE-TV-4911-30-0703-1130), issued to Respondent by DNER pursuant to 40 C.F.R. Part 70 on November 15, 2011 (hereinafter, the "Title V permit").

64. The Title V permit expired on November 15, 2016.

65. On November 16, 2015, AES submitted a Title V permit renewal application to DNER.

66. On January 7, 2016, DNER determined AES' Title V permit renewal application was administratively complete and in compliance with RCAP Rule 602 and issued a permit shield in accordance with RCAP Rule 605. However, AES is still waiting for DNER to issue the Facility Title V permit renewal.

67. On October 29, 2001, the EPA issued a revised final PSD permit (the "PSD permit") to AES for the construction and operation of a 454-megawatt coal-fired steam electric generation facility located in Guayama, Puerto Rico.

68. On August 12, 2003, and April 19, 2004, AES proposed a series of changes to the final PSD permit. On August 10, 2004, the EPA approved these changes and issued a second revised PSD Permit to AES (the "Revised PSD permit").

69. Section XIV.5 of Attachment 2 of the Revised PSD permit establishes that AES shall submit a quarterly written report of all excess emissions to the EPA. Each quarterly report shall be postmarked by the thirtieth day following the end of each quarter and shall include the following: a) the magnitude of excess emissions, b) identification of each period of excess emissions; c) the date and time identifying each period; and d) if no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

70. On December 13 and 14, 2021, EPA Region 2, accompanied by an inspector from Eastern Research Group ("ERG"), conducted an on-site inspection of the Facility (the "Inspection"). The report of the Inspection was provided to AES on February 14, 2022, by electronic mail.

71. During the Inspection, the EPA and ERG inspectors (the "Inspectors") conducted a walkthrough of the Facility, reviewed and requested information to evaluate

Respondent's compliance with the MATS rule and the Permit, and had a discussion with AES representatives about the Facility operations.

72. During the Inspection closing meeting, the Inspectors requested that AES provide the following documents and information via electronic mail by January 20, 2022:

a. Documentation from LUMA requesting that AES postpone maintenance-related shutdown events.
b. The Title V permit shield letter from DNER.
c. Compliance matrix from AES' former environmental health and safety ("EHS") manager.
d. Tank emission estimates for 2020.
e. Method 9 opacity certifications from 2021.
f. One year of boiler records showing shutdown and startup periods to confirm that post-outage startups and shutdowns are the appropriate durations.
g. Most recent two toxicity characteristic leaching procedure ("TCLP") analyses of bed and fly ash.
h. Performance tests for the limestone dryer.
i. Completed copies of fugitive dust plan training form, complaint log, and weekly inspections for June 2021through December 2021.
j. Black start generator construction permit.
k. Semi-Annual Title V permit Monitoring Report for 2020 and January-June 2021 for both units.
l. Semi-Annual MATS Compliance Reports for 2020 and January-June 2021 for both units.
m. Mercury sorbent trap sampling results from 2020 and 2021 year-to-date for each unit.
n. 2020 and 2021 year-do-date 30-day rolling average mercury values used to demonstrate MATS compliance for each unit.
o. Unit 1 and 2 MATS/Part 75 RATA results corresponding to 2020 and 2021 year-to-date.
p. Unit 1 and 2 quarterly PM/HCl MATS compliance performance testing corresponding to 2020 and 2021 year-to-date.
q. Records of all startups and shutdowns from 2020 to 2021 year-to-date. This includes occurrence and duration of startup and shutdown events.
r. Standard operating procedures for bringing control equipment online during a startup on each unit electrostatic precipitator, lime injection, and dry scrubber.
s. Records of the occurrence of any malfunctions to process or control equipment and steps taken to minimize emissions during malfunctions.
t. Revised MATS monitoring plan to include changes needed to Table 2-2 of AES' MATS site-specific monitoring plan, to update the serial number of the CO_2 analyzers currently in use.
u. Confirmation that AES' last submission to the ECMPS Client Tool was in April 2017.

v. Expected schedule for the next AGREMAX™ and coal barges.

73. On January 7, 2022, AES requested an extension of time to submit the information to the EPA until February 3, 2022. The EPA granted the extension until January 28, 2022, and informed AES that it was open to providing additional time for any specific item if needed.

74. In a virtual meeting held on January 27, 2022, AES informed EPA about a series of MATS compliance issues found as a result of an internal compliance audit, AES' proposed corrective actions, and next steps.

75. On January 28, 2022, AES electronically submitted information that EPA had requested in the January 27 meeting via a secure file transfer protocol ("FTP") link hosted by AES' outside counsel, entitled, "AESPR Document Production." The EPA was able to access the documents on that same day.

76. On February 3, 2022, AES informed EPA via email that revised Part 75 RATA Reports for 2020 and 2021 were added to the FTP site as Attachment 11A_rev and Attachment 11B_rev.

77. On April 1, 2022, the DNER received AES' 2021 annual air emissions statement, including the air emissions inventory; AES' authorized representative's certification; and copies of the calculations used to determine actual emissions from the Facility.

78. On April 4, 2022, the DNER received AES' 2021 Title V Annual Compliance Certification (the "2021 TVACC"); the semi-annual compliance monitoring reports for the reporting period from January 1, 2021, through June 30, 2021, and the period from July 1, 2021, through December 31, 2021; and the Risk Management Program compliance certification.

79. On April 29, 2022, EPA received AES' CEMS Quarterly Report corresponding to the first quarter of 2022, in accordance with the requirements of the Revised PSD permit, 40 C.F.R. § 60.49a, and 40 C.F.R. Part 60, Appendix F.

80. On May 19, 2022, AES and EPA held a meeting on which AES provided EPA a status of the MATS compliance issues disclosed on January 27, 2022. AES discussed its corrective action plan, including which of the actions were completed. AES also informed EPA about the compliance issues with the Facility mercury limit triggered by power outages that affected the Facility in March and April of 2022. EPA requested that AES provide further details about the events and which corrective actions were taken.

81. On June 9, 2022, EPA sent an email to AES requesting further information about the Facility, including (1) reports of an outage(s) at Unit 2 in 2022, including issues related to the mercury control-injection system; (2) reports related to issues with the mercury sorbent traps that occurred between 2018 and 2022; (3) copies of lab results of the sorbent traps sent to a U.S. laboratory for analysis, including chain-of-custody documents; and (4) standard operating procedures or manuals for the on-site analysis of the sorbent traps, including accountability procedures to ensure that the testing was done according to the established procedures.

82. On June 24, 2022, AES submitted to EPA copies of the laboratory analysis of the sorbent traps and associated chain-of-custody documentation.

83. On July 1, 2022, AES submitted to EPA information about the issues that affected the Facility's mercury control-injection system, including the measures taken to reduce the emissions and to prevent future occurrences. AES confirmed that the mercury control-injection system for Unit 2 was affected by several issues, including two forced outages

from between March 25, 2022, and March 31, 2022, and also from April 6, 2022, to April 11, 2022. These outages and other issues caused the Facility to exceed the MATS Hg limit from March 17-21, 2022, and from April 5-12, 2022.

84. Based on the observations made during the Inspection and the evaluation of relevant Facility documents, EPA found and confirmed that:

a. AES failed to properly operate its Hg sorbent trap monitoring system and CO_2 analyzer at all times, in a manner consistent with the requirements contained in 40 C.F.R. § 63.10032(c).[4] Pursuant to 40 C.F.R. §§ 63.10020(d) and 63.10032(h), records of periods of malfunction and actions taken during malfunctions must be kept. AES provided sorbent trap sample analysis results and chain-of-custody documentation showing that samples collected from 2018 through 2021 were analyzed on or about December 13, 2021, and in several instances, in 2022. Furthermore, AES' records indicate that the Hg sorbent trap monitoring systems were not functioning from July 1, 2021, through December 31, 2021 (*i.e.*, 4,415 consecutive hours for the Unit 1 system and 3,910 consecutive hours for the Unit 2 system). AES' most recent semi-annual compliance reports indicated that the CO_2 monitor failed its RATA performed on December 16, 2020, and linearity checks were not performed during the third and fourth quarters of 2021.

b. As indicated above, AES provided sorbent trap sample analysis results and chain-of-custody documentation showing that samples collected from 2018 through 2021 were analyzed on or about December 13, 2021, and in several instances in 2022. During these periods, AES failed to calculate and record a 30-boiler-

[4] Consistent with 40 C.F.R. § 63.10000(c)(1)(vi)(B), AES has opted to operate Hg sorbent trap monitoring systems to demonstrate compliance with the Hg emission limit.

operating-day rolling average Hg emission rate, in units of the standard, updated after each new boiler operating day.

c. AES failed to comply with the applicable Hg emission limit on two occasions, specifically during the periods of March 17-21, 2022, and April 5-12, 2022.

d. AES failed to conduct adequate PM and HCl quarterly performance testing. Through records obtained from DNER and AES' responsive records provided after the Inspection, the EPA determined that several quarterly reports between 2017 and 2021 were not submitted, and some were not submitted timely in violation of the MATS rule.

e. AES failed to certify the CO_2 CEMS and flow rate monitors. AES' CO_2 analyzer failed its certification during the December 16, 2020, RATA test for both Units 1 and 2. No further certification efforts were conducted until the next annual RATA on December 15, 2021, during which the CO_2 analyzer for both units passed its certification. The December 16, 2020, RATA test report indicated that the CO_2 analyzer recertification was going to be reattempted in the quarter following the quarter in which the analyzer was repaired. Moreover, the flow rate monitor for Unit 1 failed its certification during the December 15, 2021 RATA test. Section 2-2 of the RATA test report indicates that Unit 1's Flow Rate Monitoring System could not be considered representative of stack emissions and required recertification RATA at all three operating load ranges of Low, Mid, and High.

f. AES failed to comply with the requirements under Appendix A to the MATS rule, containing Hg monitoring provisions, by failing to follow the quality assurance

and quality control and Hg sorbent trap monitoring system RATA certification requirements.

g. AES failed to submit Hg emissions data reports, MATS semi-annual compliance reports, and quarterly performance test reports electronically via the ECMPS Client Tool from the reporting periods of October 2017 through October 2021.

h. AES failed to submit the semi-annual compliance reports required in Section III.15 of the Permit and Rule 603(a)(5)(i) of the RCAP to be submitted by April 1 and October 1 of each year.

i. AES failed to perform routine weekly visible emissions ("VE") observations at the limestone dryer location, as required in Section V.B.2.b.3 of the Title V permit, which requires AES to observe the stack for a period of six minutes (when the unit is in operation) to identify if there are visible emissions that are not water vapor. As requested during the Inspection, AES provided two years of VE records to the EPA. During this two-year period, 35 observations were missing (out of the required total of 103); moreover, there was a 28-week period (from June 2021 through mid-December 2021) where no observations were made.

j. AES failed to certify any person to perform Method 9 VE observations, in violation of Section V.B.2.b.3 of the Title V permit, which requires that the person who performs the VE observations be certified by a program endorsed by the EPA or the DNER in order to identify if the unit is potentially exceeding the opacity limit stated in Rule 403 of the RCAP and/or any other applicable requirement.

k. AES failed to provide records of occurrences, duration, and actions taken during periods of malfunction, including corrective actions to restore malfunctioning processes and monitoring equipment. During the Inspection, AES informed the Inspectors that a few months before the Inspection, Unit 2 had a forced outage due to an accumulation of fly ash residue in the boiler, which increased the back pressure until the fly ash was mechanically removed. Although the Inspectors requested documents related to this malfunction, AES informed them that the records were not available. In addition, the EPA requested compliance monitoring data related to the mercury sorbent trap on December 20, 2021, which AES did not provide. In accordance with AES' MATS compliance semi-annual report submitted to EPA on January 31, 2022 and corresponding to the reporting period from July through December 2021, the mercury CMS reported 100% of downtime during this period. No explanation about this malfunction and which corrective actions taken to restore the mercury CMS were provided.

l. AES failed to comply with the Facility's site-specific monitoring plan, including reporting through the ECMPS Client Tool, proper operation of the Hg sorbent trap monitoring system, and performance testing frequency.

m. AES failed to submit the 2020 annual compliance certification to the EPA.

n. AES failed to submit the CEMS quarterly reports required by Section XIV.5 of Attachment 2 of the Revised PSD Permit, for the time period from the second quarter of 2017 through the third quarter of 2021.

o. According to the DNER, AES failed to submit the monthly fuel quality and consumption reports for portions of the years 2020, 2021, and January 2022.

p. According to the 2021 TVACC Deviation summary report, the Facility failed to comply with the following Title V permit conditions:

i. Section III.7 – Respondent submitted the 2020 Title V Annual Compliance Certification after April 1, 2021.

ii. Section III.14 – Respondent was not able to locate certain records required by the Title V permit.

iii. Section III.15 – Respondent did not submit a semi-annual report for the first half of 2021.

iv. Section III.28 – Respondent did not communicate any change in the Responsible Official.

v. Section V.A.2 – Respondent failed on 18 occasions to comply with the requirement for the CEMS to be on-line and in operation 95% of the time when CFBs were in operation.

vi. Section V.B.1.b.(3).iii.(A) – Respondent failed on 18 occasions to comply with requirement for the CEMS non-operating time not to exceed 5% of the CFBs' operating time.

vii. Section V.B.1.b.(4).i – Respondent reported 86 deviations of its CFBs opacity limit in the second, third, and fourth quarters of 2021.

viii. Section V.B.1.b.(6).i – Respondent reported 57 deviations of its CFBs NO_x emission limit.

ix. Section V.B.1.b.(7).i. – Respondent reported 25 deviations of its CFBs CO emission limit.

x. Section V.B.1.b.(8).i. - Respondent reported 51 deviations of its CFBs SO_2 emission limit.

xi. Section V.B.1.b.(8).v – Respondent failed to submit the CFBs monthly report of the sulfur content in the coal and diesel for the month of August 2021.

xii. Section V.B.1.b.(14).i – Unit 2's start-up time exceeded 14 hours four times in the reporting period.

xiii. Section V.B.1.b.(14).iii – Unit 1's shutdown time exceeded eight hours on one occasion during the reporting period. Unit 2's shutdown time exceeded eight hours twice during the reporting period.

xiv. Section V.B.1.b.(15).iii – Respondent failed to provide valid CO_2 concentration data to determine compliance with heat input limits of its CFBs due to failed RATA.

xv. Section V.B.2.b.(2).iv – Respondent failed to locate the daily records of the hours of operation of the limestone dryer.

xvi. Section V.B.2.b.(3).iii – Respondent failed to notify DNER at least 15 days prior to conducting an opacity reading to show compliance with the limestone dryer opacity limit.

xvii. Section V.B.2.b.(3).v – Respondent failed to locate documentation of the required limestone dryer visual emission inspections conducted by a certified observer for the months of January 2021, as well as June through December 2021. Additionally, the February 2021 through May 2021 readings were conducted by an observer with an expired certification.

xviii. Section V.B.2.b.(3).vi and vii – in 2021, Respondent failed to locate documentation of corrective measures taken immediately to eliminate excess opacity from the limestone dryer, documentation of the cause of the emissions with such elevated opacity, or documentation of the steps taken to correct any deficiency.

xix. Section V.B.2.b.(4).vi – Respondent failed to locate records of baghouse pressure drops between January 1, 2021 and September 23, 2021 related to the limestone processing building.

xx. Section V.B.2.b.(10).ii – Respondent failed to locate the monthly sulfur content report for the month of August 2021 related to the limestone processing building.

xxi. Section V.B.3.b.(5).iv – Respondent failed to provide DNER an opportunity to observe performance testing related to cooling towers.

xxii. Section V.B.5.b.(5) – Respondent failed to submit the monthly sulfur content report for August 2021 related to the emergency equipment.

xxiii. Sections V.B.6.b.(2).i &vi and (4).iii – Throughout 2021, Respondent failed to conduct the required monthly visual observations and the required weekly baghouse pressure drop inspections related to the coal handling activities.

xxiv. Sections V.B.7.b.(2).i & iv and (3).iii – Throughout 2021, Respondent failed to conduct the required visual observations with a certified observer and the weekly baghouse pressure drop inspections related to the limestone handling operations.

xxv. Sections V.B.9.b.(1).ii, vii, & x and (3).iii – Throughout 2021, Respondent failed to conduct the required visual observations and the required weekly baghouse pressure drop inspections related to the ash aggregate handling operations for 2021.

xxvi. Section V.C.1.a – Respondent failed to submit to EPA and DNER the required coal sampling reports corresponding to the first quarter of 2021.

xxvii. Section V.C.1.b – Respondent failed to conduct the required composite coal sample analysis for 2021.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

85. Respondent is a "person" within the meaning of Section 302(e) of the Act.

86. Respondent is the owner and operator of the Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and 40 C.F.R. § 63.2.

87. The Facility is a "major source," as defined in RCAP Rule 601.

88. The Facility is subject to the applicable requirements in the MATS rule, NESHAP Subpart UUUUU.

89. Respondent is in violation of 40 C.F.R. §§ 63.9991(a)(1), 63.10000(a), and 63.10000(b) for failing to comply with the Hg emission limit during the periods of March 17-21, 2022 and April 5-12, 2022.

90. Respondent is in violation of 40 C.F.R. §§ 63.10032(c), 63.10032(h), and 63.10020(d) for failing to operate the Hg sorbent trap monitoring system and CO_2 analyzer in a continuous manner, and failing to keep records of actions taken during periods of

malfunction, including corrective actions, to restore malfunction process and monitoring equipment to its normal or usual manner of operation.

91. Respondent is in violation of 40 C.F.R. §§ 63.10006(c) and (d) for failing to conduct quarterly performance testing for PM and HCl.

92. Respondent is in violation of 40 C.F.R. §§ 63.10010(b) and (c) for failing to certify its CO_2 CEMS and flow monitor in accordance with 40 C.F.R. Part 75.

93. Respondent is in violation of 40 C.F.R. §§ 63.10010(g) and 63.10021(b) for failing to calculate and record a 30-boiler-operating-day rolling average Hg emission rate, in units of the standard, updated after each new boiler operating day, using all quality-assured hourly data recorded by a sorbent trap monitoring system to calculate the arithmetic average emissions rate in units of the standard on a continuous 30-boiler-operating-day rolling average basis, updated at the end of each new boiler operating day.

94. Respondent is in violation of 40 C.F.R. § 63.10021(f) for failing to submit the Hg emissions data report required by 40 C.F.R. § 63.10031(a)(1), the semi-annual compliance reports required by 40 C.F.R. § 63.10031(b), and quarterly performance test reports required by 40 C.F.R. § 63.10031(f) electronically via the ECMPS Client Tool.

95. Respondent is in violation of 40 C.F.R. § 63.10032(a) for failing to keep records to demonstrate compliance with Appendices A, B, and C to the MATS rule, and for failing to keep other records required by 40 C.F.R. §§ 63.10(b)(2)(viii) and (xiv).

96. Respondent is in violation of 40 C.F.R. §§ 63.10032(g) and (h) for failing to keep records of the occurrence and duration of each malfunction of an operation, such as process, air pollution control, or monitoring equipment, and failing to keep records of actions taken

during periods of malfunction, including corrective actions, to restore malfunctioning equipment to its normal or usual manner of operation.

97. Respondent is in violation of the general requirements of the MATS rule, specifically those included in 40 C.F.R. § 63.10000(d)(4), which require facilities with CEMS, CMS, sorbent trap monitoring systems, and CPMS to develop a site-specific monitoring plan and to operate and maintain such systems according to the site-specific monitoring plan. Respondent deviated from the site-specific monitoring plan by failing to report through the ECMPS Client Tool, to properly operate a Hg sorbent trap monitoring system, and comply with the performance testing frequency requirements.

98. Respondent is in violation of RCAP Rule 603(a)(4)(ii) and Section III.14 of the Title V permit for failing to provide records required by the Title V permit.

99. Respondent is in violation of RCAP Rule 603(a)(5)(i) and Section III.15 of the Title V permit for failing to submit semi-annual reports to the DNER.

100. Respondent is in violation of RCAP Rule 602(c)(2)(ix)(C) and Section III.7 of the Title V permit by failing to submit the annual compliance certification for 2020 to the EPA.

101. Respondent is in violation of Section III.28 of the Title V permit for failing to notify DNER of the change of its Responsible Official.

102. Respondent is in violation of Section V.A.2 of the Title V permit for failing on 18 occasions to comply with the requirement for the CEMS to be on-line and in operation 95% of the time when CFBs were in operation during 2021.

103. Respondent is in violation of RCAP Rule 403(A)(1) and Section V.B.1.b.(4).i of the Title V permit for exceeding the visible emissions and opacity limitations 86 times in the second, third, and fourth quarters of 2021.

104. Respondent is in violation of RCAP Rule 410(F) and Section V.B of the Title V permit for failing to submit monthly fuel quality and consumption reports to the DNER.

105. Respondent is in violation of at least eight Title V permit conditions applicable to its CFB units during 2021, including the following: (1) Section V.B.1.b.(3).iii.(A) (CEMS non-operating time);; (2) Section V.B.1.b.(6).i (NOx emission limit); (3) Section V.B.1.b.(7).i. (CO emission limit); (4) Section V.B.1.b.(8).i. (SO_2 emission limit); (5) Section V.B.1.b.(8).v (monthly coal and diesel sulfur content report); (6) Section V.B.1.b.(14).i (Unit 2 start-up time); (7) Section V.B.1.b.(14).iii (Unit 1 shut-down time); and (8) Section V.B.1.b.(15).iii (failure to provide valid CO_2 concentration data due to failed RATA).

106. Respondent is in violation of at least six Title V permit conditions applicable to its limestone processing building during 2021, including the following: (1) Section V.B.2.b.(2).iv (daily records of operation of limestone dryer); (2) Section V.B.2.b.(3).iii (notification to DNER in advance of opacity readings); (3) Section V.B.2.b.(3).v (limestone dryer opacity certified observer requirement); (4) Sections V.B.2.b.(3).vi and vii (limestone dryer opacity corrective measures); (5) Section V.B.2.b.(4).vi (baghouse pressure drops records); and (6) Section V.B.2.b.(10).ii (monthly sulfur content reports).

107. Respondent is in violation of Section V.B.3.b.(5).iv of the Title V permit for failing to provide DNER an opportunity to observe the performance testing related to the cooling towers.

108. Respondent is in violation of Section V.B.5.b.(5) of the Title V permit for failing to submit the required monthly content reports related to the emergency equipment.

109. Respondent in is violation of Sections V.B.7.b.(2).i & iv and (3).iii of the Title V permit for failing to conduct the required visual observations with a certified observer and the weekly baghouse pressure drop inspections related to the limestone handling operations.

110. Respondent in is violation of Sections V.B.9.b.(1).ii, vii, & x and (3).iii of the Title V permit for failing to conduct the required visual observations and the required weekly baghouse pressure drop inspections related to the ash aggregate handling operations.

111. Respondent in is violation of Section V.C.1.a of the Title V permit for failing to submit to EPA and DNER the required coal sampling reports for 2021.

112. Respondent in is violation of Section V.C.1.b of the Title V permit for failing to conduct the required composite coal sample analysis for 2021.

113. Respondent is in violation of the reporting provisions of the Revised PSD Permit included in Attachment 2 of Section XIV.5, and 40 C.F.R. § 52.21, for failing to submit a quarterly written report of all excess emissions to the EPA for the time period from the second quarter of 2017 through 2021.

114. Upon information and belief, these violations are ongoing.

ENFORCEMENT

Sections 113(a)(1) and (3) of the CAA provide that the Administrator may bring a civil action whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement, rule, or permit issued under the provisions of Section 113 of the CAA. The Administrator shall notify the person and the state in which the plan applies of such a finding. At any time after the expiration of thirty days following the date that this Notice of Violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28):

a. issue an order requiring such person to comply with the requirements or prohibitions of a SIP or permit;
b. issue an administrative penalty order in accordance with CAA Section 113(d); or
c. bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations such as those discussed above of the CAA and its implementing regulations is set by statute at not more than $25,000 per day for each violation, but has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L.114-74, Section 701). For civil penalties for violations that occurred after November 2, 2015 and are assessed on or after January 12, 2022, this daily penalty maximum is adjusted to $109,024 for judicial actions, and $51,796 for administrative actions. *See* 40 C.F.R. Part 19, Table 1.

Furthermore, for any person who knowingly violates any requirements or prohibition of an applicable SIP and permit for more than 30 days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility or other facilities owned or operated by Respondent being declared ineligible for participation in any federal contract, grant, or loan program.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, the EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows the EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, the EPA will consider a violation to continue for the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, the EPA will reduce the penalty accordingly.

OPPORTUNITY FOR A CONFERENCE

Respondent may request a video conference with the EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violations, and on any efforts it may have taken or proposes to take, to achieve compliance. A request for a conference must be made within ten days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to Amanda Prentice, Assistant Regional Counsel, at prentice.amanda@epa.gov.

Notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

Date: July 25, 2022

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