

## Exhibit 1

Wednesday, March 13, 2024 at 19:14:01 Atlantic Standard Time  
Received:

NEPR

Mar 15, 2024

6:43 PM

**Subject:** Fwd: Generator Acquisition Update  
**Date:** Wednesday, March 13, 2024 at 6:47:06 PM Atlantic Standard Time  
**From:** Lcdo. Juan González  
**To:** Lcdo. Alexis Rivera  
**Attachments:** image001.jpg

Sent from my iPhone

Begin forwarded message:

**From:** "Batista Bustelo, Sebastian (AAPP)" <[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>  
**Date:** March 13, 2024 at 4:09:11PM AST  
**To:** "Lcdo. Juan González" <[jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net)>, [josue.colon@prepa.pr.gov](mailto:josue.colon@prepa.pr.gov), Ezequiel J Nieves-Ayala <[EZEQUIEL.NIEVES@prepa.pr.gov](mailto:EZEQUIEL.NIEVES@prepa.pr.gov)>, Lionel E Santa Crispín <[LIONEL.SANTA@prepa.pr.gov](mailto:LIONEL.SANTA@prepa.pr.gov)>  
**Cc:** "Loran Butron, Gerardo (AAPP)" <[Gerardo.Loran@p3.pr.gov](mailto:Gerardo.Loran@p3.pr.gov)>, "Fontanés Gómez, Fermín E. (AAPP)" <[Fermin.Fontanes@p3.pr.gov](mailto:Fermin.Fontanes@p3.pr.gov)>, "Laboy Rivera, Manuel (AAPP)" <[mlaboy@cor3.pr.gov](mailto:mlaboy@cor3.pr.gov)>  
**Subject:** FW: Generator Acquisition Update

Saludos a todos,

Favor de ver email de FEMA donde autorizan la compra de los 14 generadores de NFE.

CENTRAL OFFICE FOR RECOVERY,  
RECONSTRUCTION AND RESILIENCY  
**COR3**  
**P3 AAFAF**



**Sebastián E. Batista Bustelo**  
Chief of Staff & Chief Legal Counsel

✉ [sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)

☎ 787-642-1954

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**From:** Casper, Nancy <[Nancy.Casper@fema.dhs.gov](mailto:Nancy.Casper@fema.dhs.gov)>  
**Sent:** Wednesday, March 13, 2024 4:06 PM  
**To:** Laboy Rivera, Manuel (AAPP) <[mlaboy@cor3.pr.gov](mailto:mlaboy@cor3.pr.gov)>; Batista Bustelo, Sebastian (AAPP)

<[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>

**Subject:** Generator Acquisition Update

Sir,

As we discussed, New Fortress Energy has informed the Government of Puerto Rico they do not possess 3 of the generators at the Palo Seco temporary generation site and the owner is unwilling to sell them to New Fortress Energy. New Fortress Energy has offered to switch out those 3, TM2500 Gen8 generators with 3 they do own that are TM2500 Gen 6 units. Given the swap is not a like model, FEMA is authorizing the 428 funds be used at this time toward only the acquisition of the 14 units on site that are part of the existing system.

Nancy Casper

Senior Advisor: Puerto Rico Power Stabilization Taskforce

FEMA-4671-DR-PR

Mobile: 303-476-1579

[Nancy.Casper@fema.dhs.gov](mailto:Nancy.Casper@fema.dhs.gov)

**From:** "Batista Bustelo, Sebastian (AAP)" <[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>  
**Date:** March 15, 2024 at 3:30:17 PM AST  
**To:** [josue.colon@prepa.pr.gov](mailto:josue.colon@prepa.pr.gov), Ezequiel J Nieves-Ayala <[EZEQUIEL.NIEVES@prepa.pr.gov](mailto:EZEQUIEL.NIEVES@prepa.pr.gov)>, Lionel E Santa Crispín <[LIONEL.SANTA@prepa.pr.gov](mailto:LIONEL.SANTA@prepa.pr.gov)>, "Lcdo. Juan González" <[jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net)>  
**Cc:** "Loran Butron, Gerardo (AAP)" <[Gerardo.Loran@p3.pr.gov](mailto:Gerardo.Loran@p3.pr.gov)>, "Laboy Rivera, Manuel (AAP)" <[mlaboy@cor3.pr.gov](mailto:mlaboy@cor3.pr.gov)>, "Fontanés Gómez, Fermín E. (AAP)" <[Fermin.Fontanes@p3.pr.gov](mailto:Fermin.Fontanes@p3.pr.gov)>  
**Subject:** FW: [EXTERNAL] Notification regarding the recently received Execution Version of the APA Excluding all Comments and Proposed Amendments  
**Submitted by** PREPA

Exhibit 2  
Saludos,

Les incluyo borrador sugerido para responderle a FOMB.

\*\*\*\*\*

Good afternoon,

Thanks for your prompt response and attention to this urgent matter. The Puerto Rico Electric Power Authority (PREPA) has received confirmation from the Puerto Rico Public-Private Partnerships Authority and the Central Office for Recovery, Reconstruction and Resiliency (COR3) that all 14 borescopes reports have been received. After the evaluation of the reports it has been identified that (a) FIVE (5) turbines are already scheduled to undergo Hot Section maintenance before the end of 2024, b) the unserviceable compressor of Palo Seco Unit #2, that unit (which is not scheduled for maintenance during 2024) will require Hot Section maintenance very soon, and c) that Palo Seco Unit #4 that has been identified with non-serviceable damage due to compressor damages. In light of this, the GPR has requested that NFE should cover seven (7) Hot Section maintenance free-of-charge and NFE has agreed.

Please let me know if additional information is required.

Regards

CENTRAL OFFICE FOR RECOVERY,  
RECONSTRUCTION AND RESILIENCY

**COR3**

**P3 AAFAF**



**Sebastián E. Batista Bustelo**  
Chief of Staff & Chief Legal Counsel

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## Exhibit 3

Friday, March 15, 2024 at 17:55:35 Atlantic Standard Time

**Subject:** Fwd: P3A - GenSets Discussion  
**Date:** Friday, March 15, 2024 at 5:15:44 PM Atlantic Standard Time  
**From:** Lcdo. Juan González  
**To:** Lcdo. Alexis Rivera, Lcdo. Juan Martínez  
**Attachments:** image001.jpg

Sent from my iPhone

Begin forwarded message:

**From:** "Batista Bustelo, Sebastian (AAPP)" <[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>  
**Date:** March 15, 2024 at 5:11:22PM AST  
**To:** "Lcdo. Juan González" <[jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net)>  
**Subject:** FW: P3A - GenSets Discussion

Juan,

Ver el email de abajo déjame saber si es suficiente.

CENTRAL OFFICE FOR RECOVERY,  
RECONSTRUCTION AND RESILIENCY  
**COR3**  
**P3 AAFAF**



**Sebastián E. Batista Bustelo**  
Chief of Staff & Chief Legal Counsel

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**From:** David Canales <[dcanales@newfortressenergy.com](mailto:dcanales@newfortressenergy.com)>  
**Sent:** Friday, March 15, 2024 12:02 AM  
**To:** Pironi, Belen <[bpironi@cgsh.com](mailto:bpironi@cgsh.com)>; George Hopkins <[ghopkins@velaw.com](mailto:ghopkins@velaw.com)>; Triller, Todd <[TTriller@velaw.com](mailto:TTriller@velaw.com)>  
**Cc:** Cooper, Richard J. <[rcooper@cgsh.com](mailto:rcooper@cgsh.com)>; Kordula, Chantal E. <[ckordula@cgsh.com](mailto:ckordula@cgsh.com)>; Martini, Carla <[camartini@cgsh.com](mailto:camartini@cgsh.com)>; Batista Bustelo, Sebastian (AAPP) <[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>; Loran Butron, Gerardo (AAPP) <[Gerardo.Loran@p3.pr.gov](mailto:Gerardo.Loran@p3.pr.gov)>  
**Subject:** RE: P3A - GenSets Discussion

Thanks Sebastián and Belén. We are very eager and excited to close tomorrow. We've all put a tremendous amount of work into this and it will be a great outcome for Puerto Rico. As discussed on the call, in an effort to get us across the finish line, we'd propose the following to close out the two issues you presented:

1 – For no cost, NFE Power PR will provide up to 2 major maintenances for the turbine engine of any of the acquired units in the first 12 months following closing. PREPA simply needs to request the service and identify the unit(s) and NFE Power PR will respond.

2- NFEnergia will supply the fuel/regassification services to the acquired units starting 12:01 am on March 16th under the newly issued fuel agreement. We are happy to discuss additional considerations with respect to regasification services starting on Monday, March 18.

We'd appreciate being able to focus on closing this transaction tomorrow to ensure no disruption of service on March 16th. We are confident that any further issues can be worked out quickly given our existing presence in Puerto Rico and interest in the stability of grid overall for years to come.

Thank you for your consideration. Look forward to getting together post-closing to say congratulations.

**From:** Pironi, Belen <[bpironi@cgsh.com](mailto:bpironi@cgsh.com)>

**Sent:** Thursday, March 14, 2024 8:35 PM

**To:** David Canales <[dcanales@newfortressenergy.com](mailto:dcanales@newfortressenergy.com)>; George Hopkins <[ghopkins@velaw.com](mailto:ghopkins@velaw.com)>; Triller, Todd <[TTriller@velaw.com](mailto:TTriller@velaw.com)>

**Cc:** Cooper, Richard J. <[rcooper@cgsh.com](mailto:rcooper@cgsh.com)>; Kordula, Chantal E. <[ckordula@cgsh.com](mailto:ckordula@cgsh.com)>; Martini, Carla <[camartini@cgsh.com](mailto:camartini@cgsh.com)>; Batista Bustelo, Sebastian (AAPP) <[sbatista@cor3.pr.gov](mailto:sbatista@cor3.pr.gov)>; Loran Butron, Gerardo (AAPP) <[Gerardo.Loran@p3.pr.gov](mailto:Gerardo.Loran@p3.pr.gov)>

**Subject:** P3A - GenSets Discussion

Hi all –

Further to our conversation, please find below the two requests from the government parties:

- Special indemnity – Any liabilities arising from the information that has been disclosed in Section 5.6(c) of the disclosure schedules (and any information of the sort that may be included by the time we finalize them) should be subject to a special indemnity (not subject to any limitations on liability).
- Lease for Regasification Equipment – As stated since the beginning of the negotiations, the ability to use the regasification equipment is critical for the operation of the assets and should be available to PREPA regardless of who is the operator of the temporary units and the fuel supplier.

We look forward to receiving your responses to the above, and available for the rest of the evening to discuss at your convenience.

Best,

Belén  
For the Cleary team

---

**Belén Pironi**

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T: +1 212 225 2305  
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**OFFICE OF CIVIL ENFORCEMENT**

WASHINGTON, D.C. 20460

March 15, 2024

BY EMAIL

Josué A. Colón Ortiz  
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Dear Sirs/Madam:

I am writing in response to the March 1 and March 11, 2024 letters from, respectively, Puerto Rico government entities and Genera PR LLC (Genera), requesting a No Action Assurance (NAA) in connection with the 17 liquified natural gas-fired generators providing 350 MW of electricity in Puerto Rico. The U.S. Environmental Protection Agency (EPA) fully appreciates the importance of reliable electricity for the people of Puerto Rico, the production of which does not cause excess emissions that are harmful to human health. As discussed below, Genera can operate the generators and continue doing so in accordance with requirements that governed their operation by the Federal Emergency Management Agency (FEMA), as long as Genera is making good faith efforts toward negotiation of a



consent decree with the EPA (which should include, among other requirements, an obligation to undertake mitigation projects to offset excess emissions) and submits all necessary permit applications.

In its discussions with Genera, the Puerto Rico Electric Power Authority (PREPA), and other Puerto Rico entities, the EPA has laid out a clear and practical path by which the generators, which FEMA installed at the Palo Seco and San Juan power plants, can remain in operation. EPA and the Department of Justice (DOJ) are following through on that path. As you know, the path includes two main components:

- Good faith negotiation of a consent decree governing Genera and PREPA's obligations regarding operation of the generators. As the EPA has indicated, and consistent with EPA's practice, the consent decree will need to include, among other things, one or more mitigation projects that the defendants will perform.
- Genera/PREPA's submission to the EPA of applications for Prevention of Significant Deterioration (PSD) permits relating to the operation of the generators; as well as either (i) Nonattainment New Source Review (NNSR) permit applications or (ii) NNSR non-applicability analyses.

With respect to the consent decree, EPA/DOJ and Genera have begun the negotiations, and both parties are prepared to work in good faith to try to reach a settlement. The parties are preparing proposed term sheets and expect to exchange them shortly.

With respect to the permits, while my office is not involved in the permitting process, I understand that Genera and EPA's air permitting staff have had productive discussions and that Genera is preparing the PSD permit applications and the NNSR application/non-applicability analyses.

Given your emphasis on the importance of the continued operation of the generators to the reliability of the energy grid, the EPA has repeatedly made it clear that it does not intend to order the generators to be shut down while we negotiate the consent decree. In operating the generators, Genera will need to comply with the same regulatory requirements as FEMA has been required to follow under the January 2023 Federal Facility Compliance Agreement (FFCA) in order to ensure the continued availability of cleaner energy until the terms of the consent decree are finalized and approved by the court. Specifically, the EPA expects Genera to make best efforts to comply with the following FFCA provisions: paragraphs 20<sup>1</sup>, 21, 23(a)(iii)-(iv) and (b)(ii), and the reporting requirements set forth in Section VII. See Enclosure.

It is not necessary or appropriate for the EPA to issue a No Action Assurance in this situation. Instead, the vehicle through which the parties are working to address the potential noncompliance is, appropriately, the consent decree referred to above. I have consulted with the Assistant Administrator

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<sup>1</sup> Subparagraphs a. and b. of paragraph 20 of the FFCA deal with performance testing of the generators. As you are aware, there are issues regarding emission limit exceedances of the formaldehyde NESHAP (40 C.F.R. Part 63 Subpart YYYYY) about which EPA will follow up with Genera separately.



for EPA's Office of Enforcement and Compliance Assurance and he agrees that a NAA should not be issued.

EPA looks forward to continuing to work with Genera on the consent decree and the permitting process.

If you have any questions about this letter, please contact Sparsh Khandeshi, Deputy Director, Air Enforcement Division, Office of Civil Enforcement, at [khandeshi.sparsh@epa.gov](mailto:khandeshi.sparsh@epa.gov) or 202-564-9913, or Amanda Prentice of the Office of Regional Counsel at [prentice.amanda@epa.gov](mailto:prentice.amanda@epa.gov) or 212-637-3209.

Sincerely,

MARY  
GREENE

Digitally signed by  
MARY GREENE  
Date: 2024.03.15  
15:28:47 -04'00'

Mary E. Greene  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance

Enclosure: Federal Facility Compliance Agreement

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866**

**IN THE MATTER OF:**

THE FEDERAL EMERGENCY  
MANAGEMENT AGENCY,

Respondent.

FEDERAL FACILITY COMPLIANCE  
AGREEMENT

Docket No. CAA-02-2023-1219

**I. SCOPE AND PURPOSE**

1. The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement (“FFCA” or “Agreement”) is to address violations under the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. §§ 7401-7671q, due to actions that are necessary to stabilize the electric grid in the Commonwealth of Puerto Rico. It is the objective of all provisions and obligations of this Agreement for the Federal Emergency Management Agency (“FEMA”), its agents, assigns, contractors, and subcontractors to achieve full compliance with all provisions of the CAA and regulations promulgated thereunder, as referenced herein, governing the operation and maintenance of the affected stationary sources.

**II. JURISDICTION**

2. The United States Environmental Protection Agency, Region 2 (“EPA”) and FEMA enter into this Agreement pursuant to CAA Section 113, 42 U.S.C. § 7413, and Executive Order No. 12088 (Oct. 13, 1978).
3. Executive Order 12088 was issued to ensure federal compliance with applicable pollution control standards. This Agreement sets forth a “plan,” within the meaning of Section 1-601 of Executive Order 12088, to achieve and maintain compliance with the applicable provisions of the CAA.

**III. PARTIES**

4. The “Parties” to this Agreement are EPA and FEMA.

5. EPA enters into this agreement pursuant to the authority vested in the Administrator, which has been delegated to the EPA Regional Administrators by EPA Delegation No. 7-6A (Administrative Enforcement Actions: Issuance of Complaints and Orders, and Signing of Consent Agreements, etc.), dated August 8, 1994, and further delegated to the Director of the Enforcement and Compliance Assurance Division (“ECAD”) for EPA Region 2.
6. FEMA officers, agents, contractors, employees, and all persons, departments, agencies, firms, and corporations in active concert or participation with them will take all necessary steps to ensure compliance with the provisions of this FFCA.
7. The provisions of this Agreement shall apply to and be binding upon EPA and FEMA and their respective successor departments, agencies, instrumentalities, agents, assigns, contractors, and subcontractors. For clarity, where the term “FEMA” is used herein, the provision also applies to its agents, assigns, contractors, and subcontractors.

#### **IV. FINDINGS OF FACT**

8. On September 17, 2022, the Governor of Puerto Rico signed an Executive Order declaring a state of emergency throughout the Commonwealth of Puerto Rico because of the passage of Hurricane Fiona. On September 21, 2022, the President declared that a Major Disaster exists in Puerto Rico and authorized FEMA to support local response efforts due to the conditions resulting from the storm. The major disaster declaration authorized FEMA to provide for emergency protective measures, including Direct Federal Assistance (“DFA”), under the Public Assistance program.
9. Thereafter, on October 12, 2022, the Governor of Puerto Rico submitted a formal request to FEMA requesting DFA to stabilize Puerto Rico’s electrical grid, in accordance with recommendations provided by the Department of Energy (“DOE”) and the United States Army Corps of Engineers (“USACE”). The same day, FEMA issued mission assignments to DOE, USACE, and EPA for the purpose of creating the Power System Stabilization Task Force (“PSSTF”) to coordinate and integrate efforts to execute the power system stabilization plan in Puerto Rico due to impacts caused by Hurricane Fiona. Pursuant to the mission assignments, USACE is acting as FEMA’s agent.
10. Hurricane Fiona’s impacts were severe and exacerbated an already precarious energy grid. There continue to be extended and frequent power outages in Puerto Rico because of the damage done to Puerto Rico’s energy grid caused by Hurricane Fiona. Such outages exact a heavy toll on the population of Puerto Rico, including loss of power to critical healthcare systems; loss of potable water services; loss of communications; loss of refrigeration for food and medicine; and loss of other medical necessities, such as at-home dialysis. Currently, there is insufficient reserve electrical generation capacity to complete repairs to Puerto Rico’s existing generation units while ensuring a stable electrical supply to the island.

11. According to FEMA, the key component to power system stabilization is the addition of temporary power generation to the grid to replace generation that is not currently online or is taken offline for repairs. To achieve this, FEMA, plans to install at least 700 megawatts (“MW”) of temporary generation capacity while they undertake the necessary repairs to Puerto Rico’s power system. USACE and/or its contractors will perform this work at the direction of FEMA through its missions assignment referred to in Paragraph 9.
12. FEMA proposes to use portable land-based combustion turbines, which are stationary sources pursuant to EPA’s CAA regulations, to provide this temporary generation capacity, such as Siemens SGT-A45 TR, Mitsubishi FT8 MobilePac, and General Electric TM2500. The temporary combustion turbines are proposed to be placed at some or all of the following Puerto Rico Electric Power Authority (“PREPA”) facilities: San Juan; Costa Sur; Aguirre; Cambalache; Palo Seco; Yabucoa; Jobos TC; Dagüao; Sabana Llana; and Ceiba.
13. FEMA will own and/or operate the combustion turbines referenced in Paragraph 12.
14. The PSSTF anticipates that its mission will proceed in two staggered phases. First, FEMA, through its mission assignments, will focus on procurement of temporary generation capacity in the San Juan Metro area; second, once sufficient generation reserve is in place, FEMA, through its mission assignments, will procure temporary generation capacity in other areas of Puerto Rico, as well as conduct priority emergency repair work on existing PREPA units and the existing transmission and distribution infrastructure. The staggered nature of the contracting and commencement of temporary power generation is designed so that Puerto Rico can receive needed back-up power generation in time for the 2023 hurricane season (which officially starts in June 2023).

## V. CONCLUSIONS OF LAW

15. FEMA is a federal agency within the meaning of CAA § 118(a), 42 U.S.C. § 7418(a) as any department, agency, or instrumentality of the executive branch of the Federal government.
16. FEMA is a “person” within the meaning of CAA § 113(a), 42 U.S.C. § 7413(a), and as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).
17. Based on the information that FEMA has made available to EPA, the turbines referenced in Paragraph 12 are or may be subject to various EPA regulations, including:
  - a) The New Source Performance Standards (“NSPS”), codified at 40 C.F.R. Part 60. Specifically, the turbines are subject to 40 C.F.R. part 60 subpart KKKK and 40 C.F.R. part 60 subpart TTTT; and

- b) The National Emission Standards for Hazardous Air Pollutants (“NESHAP”), codified at 40 C.F.R. Part 63. Specifically, the turbines are subject to 40 C.F.R. part 63 subpart YYYY; and
- c) The Prevention of Significant Deterioration (“PSD”) regulations, codified at 40 C.F.R § 52.21.

18. The Parties anticipate that there will be occasions on which the turbines will exceed the applicable NSPS and NESHAP emission and opacity standards during high- or low-load output levels, as necessitated by the emergency circumstances that exist because of the effects of Hurricane Fiona and the vulnerabilities in the system that were exacerbated by Hurricane Fiona.

## **VI. COMPLIANCE PROGRAM**

19. As of the effective date of this agreement, FEMA has not commenced the activities subject to the CAA requirements set forth in Section V (Conclusions of Law) of this Agreement. It is the intention of the Parties that implementation of the compliance program set forth in this Section VI (Compliance Program) of this Agreement will result in FEMA achieving compliance with the CAA requirements outlined in this Agreement.

20. To comply with the applicable NSPS and NESHAP regulations to which the temporary turbines referenced in Paragraph 12 are subject, FEMA shall:

- (a) conduct performance testing of the combustion turbines, as required in 40 C.F.R. Part 60 Subpart KKKK, and 40 C.F.R. Part 63 Subpart YYYY, no later than 180 days after initial start-up of each turbine.
- (b) submit reports to EPA of the performance testing within 60 business days of completing the performance testing.
- (c) conduct annual performance testing as required under the applicable NSPS and NESHAP and submit reports to EPA of the performance testing within 60 business days upon completing the performance testing.
- (d) use liquified natural gas (“LNG”) to power the combustion turbines, or when LNG is unavailable, use ultra-low sulfur diesel (“ULSD”). Note: FEMA shall obtain LNG that is as low in sulfur content as possible. In an emergency, such as a hurricane or other declared state of emergency, where neither LNG nor USLD is available, FEMA may use another type of fuel as a last resort.
- (e) maintain records and submit quarterly reports to EPA within 15 days after the end of each quarter, beginning from the first quarter upon initial start-up of any single turbine, and including the following information:

- i. the brand-name/type of each portable combustion turbine used at each PREPA facility (including the facility's name);
- ii. the number of turbines used at each facility;
- iii. the number of hours and dates operated;
- iv. records of the type and quantity of fuel burned, along with the sulfur content of the fuel;
- v. calculations of the excess emissions or opacity exceedances generated;
- vi. the amount of time any of the units were operated out of compliance with the applicable NSPS and/or NESHAP, including the amount of time the units were operated at low- or high-load levels, and a justification for why the units were operated out of compliance with the NSPS/NESHAP or at low- or high-load levels; and
- vii. the quantity (if any) of alternative fuel (other than LNG or ULSD) burned to power the turbines, along with the alternative fuel's sulfur content, the number of hours the units were operated with the alternative fuel, and a justification for the use of alternative fuel.

21. FEMA shall comply with all applicable provisions of the Puerto Rico Regulation for the Control of Atmospheric Pollution ("RCAP").

22. If FEMA determines at any time that the turbines may need to be used beyond August 31, 2025, it shall notify EPA within 24 hours of such a determination.

23. To comply with the applicable PSD regulations to which the temporary turbines referenced in Paragraph 12 are or may be subject, FEMA shall:

a. New Combustion Turbines

- i. For each new combustion turbine unit, at least 30 days prior to its installation, FEMA shall provide to EPA:
  - 1. the specifications of the combustion turbine, including: btu/hr, guaranteed emission rate of all pollutants listed in 40 C.F.R § 52.21(b)(23)(i) (in parts per million, pounds per hour, and potential to emit in tons per year), type of fuel(s), and sulfur content of the fuel(s) that will be burned;
  - 2. the intended location(s) of the combustion turbine, including the anticipated dates on which the combustion turbine will be installed and begin operation in a facility; and
  - 3. a statement as to whether the combustion turbine has any emissions controls installed on the unit.
- ii. Installation of the combustion turbine may begin once EPA receives this notification for the specified turbine.
- iii. Any pollution control system that is built into a combustion turbine operated under this Agreement shall be used and operated, pursuant to the manufacturer's instructions, at all times that the combustion turbine is operating.

- iv. Within 15 days of any request, FEMA shall provide to EPA any information relevant to the combustion turbines that EPA requests.
- b. Existing PREPA Units
  - i. Within 30 days of this Agreement, FEMA shall use best efforts to work with PREPA to provide to EPA the number of existing emission units at each PREPA site. FEMA shall also provide specifications of each emission unit, including: btu/hr, MW generation capacity, potential to emit, type of fuel(s), and sulfur content of the fuel.
  - ii. Within 15 days of any request from EPA FEMA shall use best efforts to provide to EPA any information relevant to the existing PREPA units that EPA requests.
- c. PSD Analysis of the Installation of Combustion Turbines Combined with Repair of Existing PREPA Units
  - i. FEMA's combustion turbines and/or physical changes made to existing PREPA units potentially require PSD permits (see 40 C.F.R. § 52.21).
  - ii. FEMA shall hire a consultant to help navigate and expedite the preparation and submittal of the applications for the applicable state and federal air permits required for the combustion turbines and the existing PREPA units that will undergo repair and restart. FEMA shall also direct the consultant to use best efforts to work with PREPA to develop any necessary PSD applicability analyses to demonstrate whether PSD permits are required. The consultant's analysis shall be completed within 210 days of the effective date of this Agreement, and FEMA shall provide the analysis for each facility to EPA within 15 days of when the analysis is complete. The project at each facility for PSD applicability analysis will include the installation of the new combustion turbines and the repairs to existing PREPA units.
  - iii. For facilities that require PSD permits, within 60 days of the consultant's completed analysis as set forth in (c)(ii), FEMA shall make best efforts to work with PREPA to submit a PSD application to EPA for any unit at a facility that requires a PSD permit.
  - iv. For facilities that do not require PSD permits, within 30 days of the consultant's completed analysis as set forth in (c)(ii) of this section, FEMA shall use best efforts to work with PREPA to submit to EPA for review its conclusion that PSD regulations do not apply as well as any operating restrictions necessary for the combustion turbines to avoid a PSD permit.
  - v. Within 15 days of any EPA request, FEMA shall provide to EPA any information relevant to a conclusion as to PSD.

## **VII. REPORTING REQUIREMENTS**

24. FEMA shall submit quarterly reports as described in Section VI above.



25. Each quarterly report shall be submitted by a person familiar with the operation of the turbines and shall include the name, address, and contact information of the person submitting the report.
26. Notification to EPA of any noncompliance with any provision of the Agreement or anticipated delay in performing any obligation under the Agreement shall not excuse FEMA's noncompliance or anticipated delay.
27. Unless specified otherwise, when written notifications or communications are required by the terms of the Agreement, they shall be sent by email to all Parties:

For EPA:

Robert Buettner, Chief, Air Compliance Branch, ECAD  
Harish Patel, Senior Inspector and Team Leader, Air Compliance Branch, ECAD  
290 Broadway  
U.S. Environmental Protection Agency  
Region 2  
New York, NY 10007-1866  
buettner.robert@epa.gov; patel.harish@epa.gov

Suilin W. Chan, Chief, Permitting Section, Air Programs Branch  
290 Broadway  
U.S. Environmental Protection Agency  
Region 2  
New York, NY 10007-1866  
chan.suilin@epa.gov

For FEMA:

Bryan Krane  
Deputy Director  
Response Division, Region 2  
Federal Emergency Management Agency  
One World Trade Center  
285 Fulton Street, 52<sup>nd</sup> Floor  
New York, NY 10007  
bryan.krane@fema.dhs.gov

28. Each notification or communication to EPA shall be deemed submitted on the date it is sent by email, unless otherwise mutually agreed to by the Parties. FEMA shall maintain records of each notification or communication for the duration of the Agreement.

29. All submissions provided pursuant to this Agreement shall be signed by a duly authorized representative of FEMA who has personal knowledge of the submission's contents. A person is a "duly authorized representative" and/or the installation commanding officer only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying, whether on an acting or permanent basis, a named position). Each submission shall be admissible as evidence in any proceeding to enforce this Agreement. Each submission shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

30. FEMA shall coordinate at least monthly conference calls with EPA to update EPA on the contemplated work and progress. To the extent possible, these calls should include the PSSTF members and their relevant contractors and PREPA officials. FEMA shall identify compliance challenges, or potential or actual non-compliance issues during these conference calls.

## **VIII. MODIFICATIONS**

31. The requirements, timetables and deadlines under this Agreement may be modified upon receipt of a timely request for modification and when EPA determines that good cause exists for the requested modification. Any request for modification by FEMA shall be submitted in writing and shall specify: the requirement, timetable or deadline for which a modification is sought; the good cause for the extension; and any related requirement, timetable, deadline or schedule that would be affected if the modification were granted.
32. Good cause exists for a modification when sought in regard to: a force majeure event; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with construction and where FEMA have made a timely and complete request for action from the EPA; and any other event or series of events mutually agreed to by the Parties and constituting good cause.
33. EPA shall use best efforts to reply to any written request for a modification within twenty-one (21) calendar days of receipt of a request for a modification, and, as part of such reply, advise FEMA of its position on the request. If EPA does not concur in the extension, it shall include with its statement of nonconcurrence an explanation of the basis for its position.

34. Terms and conditions of this Agreement duly modified pursuant to this Section shall be enforceable as changed. In addition, all EPA-approved submissions required by this Agreement are incorporated into and an enforceable part of this Agreement.

## **IX. DISPUTE RESOLUTION**

35. The Parties intend to work cooperatively to avoid disputes in the implementation of this Agreement. The Parties shall use reasonable efforts to quickly resolve disputes informally at the staff level. This dispute resolution process set forth in this Agreement shall be the exclusive remedy through which the Parties resolve all disputes. At any point during the dispute resolution process, FEMA may withdraw their dispute and commence or resume the previously disputed work.
36. In the event of any issue that leads to or generates a dispute, the Parties shall meet promptly and work in good faith to reach a mutually agreeable resolution of the dispute.
37. During the pendency of any dispute, FEMA agrees that it shall continue to implement those portions of this Agreement that are not in dispute.
38. The pendency of any dispute under this Section shall not affect FEMA's responsibility to perform the work required by this Agreement in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement that are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.
39. For purposes of this Dispute Resolution Section, the Parties identify the following as their points of contact. EPA's point of contact is Robert Buettner, Chief of the Air Compliance Branch, Enforcement and Compliance Assurance Division, Region 2. FEMA's point of contact is the PSSTF Leader, Bryan Krane. Any Party may change its Dispute Resolution Point of Contact by providing a written notification to the other Parties within two weeks of the change. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.
40. If the Parties are unable to informally resolve a dispute within twenty-one (21) days after any action which leads to or generates a dispute, the disputing Party shall within fourteen (14) days thereafter submit to EPA a written statement of dispute setting forth the nature of the dispute, the disputing Party's position with respect to the dispute, and the technical, legal, and factual information the disputing Party is relying upon to support its position. If the disputing Party does not provide such written statement to EPA within this fourteen (14) day period, the disputing Party shall be deemed to have agreed with EPA's position with respect to the dispute.

41. Upon EPA's receipt of a written statement of dispute from the disputing Party as provided for above, the Parties shall engage in formal dispute resolution among the Project Managers, First Line Supervisor, and/or their immediate supervisors. The Parties shall have fourteen (14) days from the receipt by EPA of the written statement of dispute to unanimously resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, the disputing Party may, within ten (10) days after the conclusion of the fourteen (14) day formal dispute resolution period, submit a written notice to EPA elevating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If the disputing Party does not elevate the dispute to the DRC within this ten (10) day period, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute.
42. The DRC will serve as a forum for resolution of any disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the Parties shall have thirty (30) days to unanimously resolve the dispute. The EPA representative on the DRC is the Director, Enforcement and Compliance Assurance Division, Dore LaPosta. FEMA's designated member on the DRC is the Federal Coordinating Officer, Nancy Casper. Written notice of any delegation of the authority from a Party's representative on the DRC to an alternate shall be provided within three (3) days of the delegation.
43. If unanimous resolution by the DRC is not achieved within this thirty (30) day period, the disputing Party may, within fourteen (14) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Deputy Regional Administrator ("DRA") of U.S. EPA Region 2 for final resolution of the dispute. If the dispute is not elevated to the Deputy Regional Administrator of U.S. EPA Region 2 within the designated fourteen (14) day period, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute. If the dispute is elevated to the EPA DRA Region 2, upon request, and prior to resolving the dispute, the EPA DRA Region 2 shall first meet and confer with the FEMA DRA Region 2 to discuss the issue(s) under dispute. Thereafter, the DRA shall engage in formal dispute resolution. At the parties' discretion, an agreed-upon facilitator may be engaged to facilitate discussions and a resolution. If an agreement cannot be reached on any issue within fourteen (14) days, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute.
44. A written statement of EPA's decision shall be provided to Respondent, which shall be final and binding upon the Parties.
45. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, FEMA shall incorporate the resolution and final determination into the appropriate statement of work, plan, schedule, or procedures as appropriate and proceed to implement this Agreement according to the amended statement of work, plan, schedule, or procedures.

46. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement, the Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

#### **X. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

47. Compliance with the terms of this Agreement in no way affects or relieves FEMA of its obligation to comply with all applicable requirements of the CAA, and regulations promulgated thereunder, or other applicable requirements of federal, state, or local law. This Agreement does not constitute a permit or permit modification and does not relieve FEMA of any obligation to comply with existing CAA permits, or any obligation to obtain a permit.

#### **XI. RIGHT OF ENTRY**

48. EPA, its contractors, and other authorized representatives shall have the right to enter any of the facilities at which FEMA is conducting work covered in this agreement, to conduct any inspection, including but not limited to records inspection, sampling, testing, or monitoring that EPA believes is necessary to determine FEMA's compliance with the Agreement.
49. All results of sampling, testing, modeling, or other data generated (including raw, or unvalidated data, which shall be made available if requested) by FEMA during implementation of this Agreement shall be submitted to EPA within seven (7) days of EPA's request.

#### **XII. STIPULATED PENALTIES**

50. In the event that FEMA fails to comply with a term or condition of this Agreement, FEMA shall be liable for stipulated penalties in the amounts set forth in this section, subject to Force Majeure and Dispute Resolution. Upon determining that FEMA has failed to comply with a term or condition of this Agreement, EPA shall so notify FEMA in writing. EPA may assess a stipulated penalty against FEMA in an amount not to exceed the amounts specified in this Section. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.
51. Stipulated penalties may be assessed for each failure to comply with the terms and conditions of this Agreement as specified below:

1-7 days late: \$2,500 for each day after FEMA has been given a seven (7)-day non-compliance notice and fails to comply with it as specified by the terms of the Agreement.

8-30 days late: \$5,500 for each day after FEMA has been given a seven (7)-day non-compliance notice and fails to comply with it as specified by the terms of the Agreement.

31-60 days late: \$11,000 for each day after FEMA has been given a seven (7)-day noncompliance notice and fails to comply with as specified by the terms of the Agreement.

Over 61 days late: \$27,500 for each day after FEMA has been given a seven (7)-day noncompliance notice and fails to comply with it as specified by the terms of the Agreement.

If dispute resolution is invoked and the EPA's position is upheld on the stipulated penalties, stipulated penalties may be assessed and may accrue from the date of the original deadline for the requirement.

52. For failures to submit timely reports under Section VII, stipulated penalties of \$100 per day for each day a report is late after FEMA has been given a seven (7)-day non-compliance notice may be assessed consistent with this Section.
53. FEMA shall pay the penalty within forty-five days (45) days of receipt of a written notification of noncompliance demanding payment of a stipulated penalty from EPA, or within forty-five (45) days of conclusion of Dispute Resolution pursuant to Section IX of this Agreement, if invoked, whichever is later.
54. All penalties shall reference this Agreement and indicate that they are in payment of stipulated penalties and be made to the United States Treasury.
55. FEMA may make the payment by either cashier's or certified check payable to the **"United States Treasury"**, and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

56. FEMA may make the payment by Electronic Fund Transfer ("EFT"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045



- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency
- f. Name of Respondent
- g. Reference to the payment of a stipulated penalty under this Agreement.
- h. Docket Number: CAA-02-2023-1219

57. FEMA may make the payment using the Intra Governmental Payment and Collection application (IPAC), Agency Location Code 68-01-0727. Please include the Docket Number (Docket No. CAA-02-2023-1219) and reference to the payment of a stipulated penalty under this Agreement in the description field of the IPAC.

58. For additional information concerning other acceptable methods of payment see:  
<https://www.epa.gov/financial/makepayment>.

59. Upon payment, FEMA shall promptly thereafter furnish reasonable proof that such payment has been made to:

Robert Buettner  
Harish Patel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866  
buettner.robert@epa.gov; patel.harish@epa.gov

60. Any requirements for the payment of stipulated penalties by FEMA shall be subject to the provisions of Section XIV ("Funding") of this Agreement.

61. Payment of a stipulated penalty under this Section shall not relieve the FEMA of the responsibility to comply any terms and conditions set forth in this Agreement.

62. In no event shall this section give rise to a stipulated penalty in excess of the amount set forth in CAA § 113(d), 42 U.S.C. § 7413(d), as modified by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and applicable regulations, 40 C.F.R. § 19.4.

63. This Section shall not affect FEMA's ability to obtain an extension of a deadline or timetable contained in this Agreement, pursuant to Section VIII (Modifications) of this Agreement.



### **XIII. FORCE MAJEURE**

64. FEMA's obligations under this Agreement shall be performed as set forth in this Agreement unless performance is prevented or delayed by a force majeure event. For purposes of this Agreement, "force majeure" is defined as any event arising from causes beyond the control of FEMA and its agents, assigns, contractors or subcontractors which could not be overcome by their due diligence and which delays or prevents the performance of any obligation under this Agreement, including acts of God or war, labor unrest, civil disturbance and any judicial orders which prevent compliance with the provisions of this Agreement.
65. Force majeure shall not include increased costs of performance of any activity required by this Agreement, the failure to apply for any required permits or approvals or to provide all information required therefore in a timely manner, nor shall it include the failure of contractors or employees to perform, nor the avoidable malfunction of equipment.
66. If FEMA experiences delays in meeting its obligations as set forth in this Agreement due to a force majeure event, it shall notify EPA promptly of any change in circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this Agreement. In addition, within fourteen (14) days of the occurrence of circumstances causing such delays, it shall provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. Respondent shall take all reasonable steps to avoid and/or minimize any such delay.
67. The burden of proving that any delay is caused by circumstances beyond the control of FEMA, its agents, assigns, contractors, and subcontractors shall rest with FEMA.

### **XIV. FUNDING**

68. It is the expectation of the Parties to this Agreement that all obligations of FEMA will be fully funded. FEMA agrees to use every legally available mechanism to seek sufficient funding to fulfill their obligations under this Agreement.
69. Failure to obtain adequate funds or appropriations from Congress does not release FEMA from its obligation to comply with this Agreement, the CAA, and the applicable regulations thereunder. If funds are not available to fulfill FEMA's obligations under this Agreement, EPA reserves the right to take any action which would be appropriate absent this Agreement.
70. Nothing in this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.

## **XV. GENERAL PROVISIONS**

71. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to Section 304 of the CAA, 42 U.S.C. § 7604.
72. This Agreement was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any law, regulations, ordinances, or common law. By entering into this Agreement, FEMA does not waive, other than as to the enforcement of this Agreement pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.
73. If any provision or authority of this Agreement or the application of this Agreement to any Party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.
74. In computing any period of time described as “days” herein, all references to “days” refer to “calendar days,” except where explicitly stated otherwise. The last day of a time period shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a legal holiday.
75. Nothing in this Agreement shall be construed to render any officer or employee of FEMA personally liable for the payment of any stipulated penalty assessed pursuant to this Agreement.

## **XVI. AUTHORITY TO BIND THE PARTIES**

76. Each undersigned signatory to this Agreement certifies that they are duly and fully authorized to enter into the terms and conditions of this Agreement and to legally bind their respective Party to the Agreement.

## **XVII. RESERVATION OF RIGHTS**

77. EPA reserves the right to commence action against any person or persons, including FEMA in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. If FEMA fails to comply with this Agreement, EPA reserves the right to pursue any remedies that it may have under the CAA or any other law for such failure to achieve compliance, notwithstanding the Dispute Resolution and Stipulated Penalties sections of this Agreement.

#### **XVIII. TERMINATION**

78. This Agreement shall terminate (i) on November 30, 2025, unless the Parties agree to extend the time frame, or (ii) upon FEMA's receipt of written notice from EPA that FEMA has satisfied all terms and conditions of this Agreement, including any additional tasks determined by EPA to be required pursuant to this Agreement, have been satisfactorily completed, whichever is earlier. This notice shall not, however, terminate FEMA's obligation to comply with any continuing obligations under the CAA.

#### **XIX. EFFECTIVE DATE**

79. The effective date of this Agreement shall be the date on which it is signed by the EPA after having been signed by FEMA.

FOR THE RESPONDENT:

Dated this \_\_\_\_ day of: \_\_\_\_\_, 2023

**DAVID S WARRINGTON**

Digitally signed by DAVID S  
WARRINGTON

Date: 2023.01.30 16:07:26 -05'00'

David S. Warrington, Regional Administrator, Region 2  
Federal Emergency Management Agency  
One World Trade Center  
285 Fulton Street, 52<sup>nd</sup> Floor  
New York, NY 10007

FOR EPA:

Dated this 30 day of: January, 2023

Anderson, Kate  
Digitally signed by  
Anderson, Kate  
Date: 2023.01.30  
14:26:10 -05'00'

*FOR*

Dore F. LaPosta, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region 2  
280 Broadway  
New York, NY 10007-1866