



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

May 18, 2020

Adam Kushner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

RE: Extension of Earthquake-Related No Action Assurances for the Puerto Rico Electric Power Authority (PREPA)

Dear Mr. Kushner,

This letter is in response to your April 29, 2020 request, on behalf of the Puerto Rico Electric Power Authority (PREPA), to extend the majority of two of the three No Action Assurances (NAAs) previously issued to PREPA following the recent earthquakes in Puerto Rico. These two NAAs are as follows:

- (1) Fuel Consumption and Analysis NAA (*issued January 31, 2020*): relates to specified fuel consumption, fuel quality, and fuel quality analysis requirements at certain gas turbines; and
- (2) Mercury and Air Toxics Standards (MATS) NAA (*issued February 13, 2020*): relates to specified violations of MATS requirements at certain electric generating units.

The two NAAs are included here as Attachments A and B to this letter, respectively.¹

More specifically, regarding the Fuel Consumption and Analysis NAA, PREPA is seeking to 1) extend the fuel consumption limits portion of the NAA and 2) expand its request to cover two additional units (Aguirre GT 2-2 and Vega Baja GT 1-2) that have come back online since the last NAA was issued. Regarding the MATS NAA, PREPA is seeking to extend all of the NAA except for the limited-use limit for San Juan Unit 8, MATS performance testing requirements, and certain MATS work practice standards. Further, PREPA is asking for an NAA for regulatory reporting requirements at Costa Sur due to what it describes as limited and restricted access to the site for safety reasons.

Beginning with earthquakes registering 4.7 and 5.0 on the Richter scale around December 28, 2019, Puerto Rico experienced multiple earthquakes and aftershocks causing extreme damage to its power

¹ Note that neither of these initial NAAs, nor the extension being granted today, applies or applied to requirements under the existing 1999 consent decree, amended in 2004, in *United States of America et al., v. Puerto Rico Electric Power Authority*, Civil Action No. 93-2527 CCC (D.P.R.). The NAAs relate to the specified Clean Air Act regulatory requirements only.

grid, with the largest earthquake being a 6.4 magnitude earthquake on January 7, 2020. Specifically, the earthquakes rendered the Costa Sur power station, a critical baseload station, inoperable. On January 7, 2020, the Governor of Puerto Rico signed an Executive Order decreeing a state of emergency throughout Puerto Rico; on January 16, 2020, the President signed a major disaster declaration for Puerto Rico.

The U.S. Environmental Protection Agency had previously determined that issuance of these NAAs was necessary to enable PREPA to supply electricity to residential and business customers; today, the EPA is determining that an extension of these two NAAs is necessary to continue to allow PREPA to address earthquake-related impacts. The EPA has thus determined that extending the requested portions of the two No Action Assurances, attached, is in the public interest given the conditions in Puerto Rico. The EPA has also determined that the addition to the NAA of relief regarding fuel consumption limits for two gas turbines and the following Costa Sur reporting requirements is also in the public interest given the conditions in Puerto Rico:

- CAA Title V reporting for Costa Sur:
 - Heat Input and Excess Emissions Report for 2nd Semester 2019 and 1st Semester 2020 (information for the period of January 1 to January 7, 2020)
 - Yearly Emergency Generators Report 2019
- MATS regulatory reporting requirements for Costa Sur:
 - 2019 Second Half Semiannual Report
 - 2019 4th Quarter Report
 - 2020 1st Quarter Report (information for the period of January 1 to January 7, 2020).

Through the issuance of this NAA extension, the EPA is continuing its commitment to address the very difficult circumstances caused by recent earthquakes.

The portions of the two NAAs extended by today's action, and the new additions to the NAA, are those that are listed in the table included at Attachment C to this NAA. Pursuant to this NAA extension, the EPA will not enforce violations of the requirements specified in Attachment C, for the period of this NAA extension. Nothing in this exercise of enforcement discretion relieves any person of the obligation under law, if any, to report emissions from the operation of equipment covered by this action.

The units subject to this NAA extension continue to be subject to the relevant conditions outlined in the two initial NAAs. Further, as a condition of this NAA extension, for all units subject to the initial Fuel NAA or the initial MATS NAA, PREPA must submit the complete final report for the term of the relevant initial NAA by the date indicated in that NAA. If Costa Sur Unit 5 and/or Aguirre Unit 2 become available to generate electricity prior to the termination date for this NAA, PREPA must provide EPA notice within 3 days of Costa Sur Unit 5 and/or Aguirre Unit 2 becoming operational. Aguirre GT 2-2 and Vega Baja GT 1-2 shall be subject to the relevant conditions in the initial Fuel Consumption and Analysis NAA. Costa Sur shall be subject to the following conditions:

1. PREPA shall continue to meet all reporting obligations that it is able to meet without entering areas of the Costa Sur facility deemed unsafe. This includes accessing record copies (backup or otherwise) not contained in areas deemed unsafe. This also includes submitting partial reports where some but not all necessary information is available.

2. As accessing the relevant information becomes safe, PREPA shall inform EPA within 10 days and shall make all efforts to expeditiously meet all reporting requirements.
3. PREPA shall comply with all recordkeeping requirements for the Costa Sur facility for facility operations on or after Jan. 8, 2020.

PREPA must submit a report to the EPA within thirty (30) days of the termination of the NAA extension containing the following information for the term of the NAA extension:

1. The name, address, and contact information for the person submitting the report;
2. Regarding the units covered by the initial Fuel Consumption and Analysis NAA, as well as Aguirre GT 2-2 and Vega Baja GT 1-2:
 - a. A description of the amount of fuel used for each covered Generating Unit during the period this NAA is in effect;
 - b. A description of how the energy was used, including any benefits provided to the public; and
 - c. A description of any instances in which fuel quality analysis results received after PREPA began burning newly-received fuel indicated that the fuel was not compliant.
3. Regarding the units covered by the initial MATS NAA:
 - a. For each of the two (2) electric generating units identified as limited use and covered by both the NAA and the NAA extension (San Juan Unit 7, Palo Seco Unit 1), the hours operated, the fuel burned, and calculations of the excess emissions generated;
 - b. For each of the five (5) electric generating units covered by this NAA (San Juan Unit 9, Palo Seco Unit 3, Palo Seco Unit 4, Aguirre Unit 1, and Aguirre Unit 2), a calculation of the total emissions during the period of the NAA; and
 - c. A description of how the energy was used, including any benefits provided to the public.
4. Regarding Costa Sur:
 - a. A list of all reporting requirements that PREPA was unable to meet due to safety concerns, including the specific reports or portions of reports that were not submitted, a description of the specific information that was inaccessible, and the specific safety issue that made it inaccessible (including the duration of the safety issue).

The report referenced above must be sent by email to Gregory Fried at fried.gregory@epa.gov and to Harish Patel at patel.harish@epa.gov. The report must be in portable document format (PDF) and be clearly labeled as “Report for PREPA Generators Operated Pursuant to the No Action Assurance Extension Issued (insert date of issuance of this NAA).” Where the information for these reports is not available due to the emergency circumstances, the EPA would accept instead an explanation of those circumstances and specifically how they prevented the collection or transmission of that information.

This NAA extension is effective as of today and terminates at 11:59 PM Atlantic Standard Time, August 14, 2020 or the date Costa Sur Unit 5 is operational, whichever is earlier. As always, the EPA reserves the right to revoke or modify the NAA extension if the EPA believes that such action is necessary to protect public health and the environment, including but not limited to if EPA’s understanding of the factual basis for this NAA extension changes. This NAA does not apply to any other federal requirements that may apply to regulated activities at this facility other than those listed above. EPA will not extend any of the no action assurances provided in this letter beyond August 14, 2020. By August 14, 2020 each of the units addressed herein must be (a) operating in compliance with applicable law; (b)

on an enforceable schedule to come into compliance with applicable law that includes appropriate limits on emissions in the interim; or (c) the subject of an enforceable schedule to come into compliance with applicable law that is awaiting approval by a federal district court (or is rapidly progressing towards such an agreement).

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by the recent earthquakes. Nothing in this NAA is intended to over-ride Puerto Rico or local authorities.

Please contact Gregory Fried, Chief, Stationary Source Enforcement Branch, with questions. Mr. Fried can be reached at (202) 564-7016 or fried.gregory@epa.gov.

Sincerely,

Susan Parker Bodine

Enclosure

cc: Peter D. Lopez, Regional Administrator, EPA Region 2

Attachment C

TABLE 1: Clean Air Act Requirements Subject to this NAA Extension

Facility	Unit	Clean Air Act Requirements and Title V Permit Obligations
San Juan	7 (100 MW)	MATS limited-use restrictions specified in the initial MATS NAA.
	9 (100 MW)	MATS particulate matter (“PM”) emission limit requirements in Subpart UUUUU specified in the initial MATS NAA.
Costa Sur	5 (410 MW) 6 (410 MW)	<p>The following Clean Air Act Title V reporting obligations:</p> <ul style="list-style-type: none"> • Heat Input and Excess Emissions Report for 2nd Semester 2019 and 1st Semester 2020 (information for the period of January 1 to January 7, 2020) • Yearly Emergency Generators Report 2019 <p>The following MATS reporting requirements:</p> <ul style="list-style-type: none"> • 2019 Second Half Semiannual Report • 2019 4th Quarter Report • 2020 1st Quarter Report (information for the period of January 1 to January 7, 2020)
Palo Seco	1 (85 MW)	MATS limited-use restrictions specified in the initial MATS NAA, as well as related Palo Seco Title V Permit requirements.
	3 (216 MW)	MATS PM emission limit and related work practice standard requirements in Subpart UUUUU specified in the initial MATS NAA, as well as related Palo Seco Title V Permit conditions.
	4 (216 MW)	MATS PM emission limit requirements in Subpart UUUUU specified in the initial MATS NAA, as well as related Palo Seco Title V Permit conditions.
Palo Seco GTs	GT 1-1 (21 MW) GT 1-2 (21 MW)	Palo Seco Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Aguirre	1 (450 MW) 2 (450 MW)	MATS PM emission limit and related work practice standard requirements in Subpart UUUUU specified in the initial MATS NAA, as well as related Aguirre Title V Permit conditions.

Facility	Unit	Clean Air Act Requirements and Title V Permit Obligations
Aguirre combined cycle gas turbines (“CCGT”)	CCGT 1-1 (50 MW) CCGT 1-2 (50 MW) CCGT 1-3 (50MW) CCGT 1-4 (50 MW) CCGT 2-1 (50 MW) CCGT 2-3 (50 MW) CCGT 2-4 (50 MW)	Aguirre Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Aguirre GT	GT 2-2 (21 MW)*	Aguirre Title V permit No. PFE-TV-4911-63-0212-0244 for conditions pertaining to fuel consumption limits (barrels per year) at Conditions V(B) and/or V(B)(d).
Mayaguez	GT-5 (54 MW) GT-6 (54 MW) GT-7 (54 MW) GT-8 (54 MW)	Mayaguez Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Cambalache Peakers	2 (83 MW) 3 (83 MW)	Cambalache Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Daguao Peakers	GT 1-1 (21 MW) GT 1-2 (21 MW)	Daguao Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Yabucoa Peaker	GT 1-1 (21 MW)	Yabucoa Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Jobos Peaker	GT 1-2 (21 MW)	Jobos Title V permit conditions pertaining to fuel consumption limits (barrels per year), as covered by the initial Fuel Consumption and Analysis NAA.
Vega Baja Peaker	GT 1-2 (21 MW)*	Vega Baja Title V permit No. PFE-TV-4911-74-0106-0021 for conditions pertaining to fuel consumption limits (barrels per year) at Conditions V(A)(1) and/or (V)(A)(1)(d).