

June 12, 2020

Chairman Neil Chatterjee  
Commissioner James Danly  
Commissioner Richard Glick  
Commissioner Bernard L. McNamee  
Federal Energy Regulatory Commission  
888 First St. NE

Washington DC 20426

RE: NF Energía, LLC

Dear Chairman Chatterjee and Commissioners Danly, Glick and McNamee:

The purpose of this letter is to request that the Federal Energy Regulatory Commission (“FERC”) enforce the Natural Gas Act (“NGA”) as it applies to NF Energía, LLC (“NF”). NF built and operates a Liquefied “Natural” (Methane) Gas (“LNG”) terminal in Wharfs A, B and C in San Juan Bay in Puerto Rico. NF did not obtain FERC authorization to build and/or operate the LNG terminal.

The undersigned are community and environmental groups and individuals concerned with energy, environmental, public health and safety issues in Puerto Rico. We participate actively in administrative, court and public forums in matters related to the electric energy system in Puerto Rico, as well other matters related to public health and the environment. We have carefully studied the NF project in the San Juan Bay and are deeply concerned that FERC has not enforced section 3 of the Natural Gas Act (“NGA”) and its regulations <sup>1</sup>requiring approval of siting, construction, and operation of LNG terminals.

We are aware that FERC has issued certain decisions which reduce the instances in which LNG terminals require its approval and authorization but believe that those decisions are either inapplicable to the NF terminal, or reflect an interpretation that is extremely prejudicial to Puerto Rico and contrary to the text and legislative history of section 3<sup>2</sup> of the NGA.

### Background and Basic Facts of the NF Project

FOIA records, though heavily redacted, reveal that FERC personnel met with NF representatives on October 17, 2017 with the stated objective of considering pre-filing of the project. As you know, the applicable regulations establish that pre-filing is the

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<sup>1</sup> 18 CFR Part 153.

<sup>2</sup> 15 US Code § 717b

first step in the process for siting and other authorizations<sup>3</sup>. The meeting was requested by Mrs. Anita Wilson, Esq. of Vinson & Elkins, LLP. However, NF did not subsequently file an application or request any authorization from FERC.

On May 3, 2018, NF signed a 20-year contract with the Puerto Rico Port Authority whereby NF leased Wharfs A, B and C, approximately 9 acres, with the purpose of constructing and operating the LNG terminal. The contract states that the parties can negotiate time extensions.

On July 30, 2018, PREPA issued a Request for Proposals ("RFP") for the conversion of units 5 and 6 of the San Juan Power Plant to burn methane gas, and for the supply of the methane gas to the plant. The RFP listed FERC's authorization as a project condition, as well as approvals from the US Coast Guard and other agencies.

On September 25, 2018, NF tendered its offer in response to the RFP. The offer describes the regasification unit, the pipeline system; the use of a floating storage unit ("FSU") vessel for storage and delivery of LNG to the regasification unit, a second storage ship as backup out at sea and land-based storage tanks in the 9 acre lot, and LNG truck loading stations for clients, other than PREPA. No such truck loading facility is in operation.

On March 5, 2019, NF and the Puerto Rico Electric Power Authority (PREPA) signed a contract whereby NF agreed to supply up to 25 TBTu yearly of "natural" (methane) gas to the San Juan Power Plant for an initial period of 5 years, with three possible extensions up to a 20 year total contract term. NF built regasification facilities and a pipeline system and other facilities to supply the methane gas to the San Juan Power Plant.

Subsequently, NF built the LNG terminal, regasification and other facilities and commenced partial operation.

On March 10, 2020, several clergy and religious organizations and groups wrote to FERC informing of the construction and operation of the NF LNG gas terminal and requested intervention by FERC. It is our understanding that to this date, FERC has not responded to this letter.

### LNG Terminal

Section 2(11) of the NGA defines the LNG Terminal as follows:

"(11) "LNG terminal" includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United

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<sup>3</sup> 18 CFR Part 153.

States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel,..."

The term "State" in section 3 includes "any organized territory of the United States".

The NGA also states that FERC shall have the exclusive jurisdiction over the approval or denial of "an application for the siting, construction, expansion, or operation of an LNG terminal". Section 3(e).

Section 3 (e) was added pursuant to the Energy Policy Act of 2005<sup>4</sup> with the clear objective of granting jurisdiction to FERC of LNG terminals and as stated above, "LNG terminals" include "all natural gas facilities located onshore or in State waters." Section 2(11).<sup>5</sup>

The legislative history of section 3(e) clearly establishes the objective of granting FERC jurisdiction over LNG terminals. It is our understanding that FERC itself endorsed the Energy Policy Act of 2005 in this regard, at the time that it was being considered by Congress.

NF has not shown or produced any written determination or order from FERC demonstrating that it is exempted in any way from Section 3 of the NGA.

Other determinations and studies by the Government of Puerto Rico have been based on the premise that FERC has jurisdiction and would scrutinize NF's gas terminal proposal as part of a siting and construction application. (See Galway Energy Advisors LLC, LNG and Natural Gas Import and Delivery Options Evaluation for PREPA's Northern Power Plants – Feasibility Study & Fatal Flaw Evaluation <https://energia.pr.gov/wp-content/uploads/2019/07/Galway-LNG-CNG-Import-Options-for-PREPA-Northern-Power-Plants-3.pdf> and the franchise issued to NF by the Puerto Rico Department of Transportation and Public Works, (Franchise Number FGN-001- Lic. 001 of May 31,2019).

FERC should be aware that the NF LNG terminal is located near residential areas where thousands of people live, close to heavily transited roads, and adjacent to commercial property.

NF's avoidance of FERC jurisdiction compromises public safety and environmental considerations for siting of an LNG terminal. This translates into increased risks to the safety of our fellow citizens, the safety of the workers of the PREPA San Juan Power Plant and the environment. It is therefore urgent

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<sup>4</sup> 15 USC § 717(b)(e).

<sup>5</sup> Waterborne vessels and section 7 transportation facilities are excluded.

that FERC carry out its duty to enforce the NGA and require NF to comply fully with the law and the applicable regulations.

Yours truly,

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