

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**PUERTO RICO ELECTRIC POWER
AUTHORITY**

Plaintiff,

v.

NFENERGIA, LLC; ET AL.

Defendants.

CIVIL NO. 26-1423 (PAD)

TEMPORARY RESTRAINING ORDER AND BOND ORDER

Before the court is plaintiff's "Emergency Motion for Temporary Restraining Order and Preliminary Injunction to Compel Performance of Section 22.12 of the Gas Sales Agreement, with Notice, and for Expedited Discovery and Hearing" (Docket No. 24). For the reasons explained below, the request for a Temporary Restraining Order ("TRO") is hereby GRANTED. The court will refer the request for a preliminary injunction to a U.S. Magistrate Judge and set a schedule for the underlying proceedings by separate Order.

TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65(b), a Temporary Restraining Order may be issued without written or oral notice to an adverse party or its attorney only if (1) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. Both requirements are satisfied here. Plaintiff has shown the following pertinent facts:¹

¹ The court presumes that the reader is familiar with the Second Amended Complaint (Docket No. 22) and the proceedings in Civil No. 26-1621 before Judge Antongiorgi-Jordán.

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1. Defendant NFEnergia LLC's ("NFE's") San Juan terminal is the only liquefied natural gas ("LNG") receipt, regasification, and handling facility in the northern part of Puerto Rico and the sole point of entry for LNG destined for San Juan Units 5 and 6. See, Docket No. 24-10, p.

2. The terminal has no reserve LNG storage tanks. The LNG carrier moored at the pier serves as both the transport vessel and the reservoir, so that when the vessel at the pier runs out of LNG, supply of natural gas to San Juan Units 5 and 6 through the terminal stops. Id.

2. Plaintiff and NFE entered into a Gas Sales Agreement (GSA). See, Docket No. 22-13. The GSA's Section 4.4.1 requires Seller to deliver the Scheduled Monthly Quantity "at the Delivery Points at the Hourly Rate." Along that line, the same provision treats as a shortfall "Seller's failure to deliver the Hourly Rate of Gas during an hour of such Month." If Seller "knows or has a reasonable basis to believe that it will not be able to make all or any part of the Scheduled Monthly Quantity of Gas available at a Delivery Point at the Hourly Rate during any Month, it will promptly notify Buyer in advance of such failure to deliver." (GSA § 4.4.1). In turn, Sections 2.1.1 and 2.1.2 require Seller to cooperate and coordinate operations with Buyer, Section 2.4.3(b) requires notice of unplanned shutdowns that materially affect delivery, and Section 11.4 requires notice of any Force Majeure claim. (Ex. 4 at 2-3.)

3. The GSA provides a remedy in case NFE fails to deliver LNG. It provides: "(A) fails to deliver Gas as and when required under Section 4.4.1 . . . or (B) declares Force Majeure, then [NFE] will enter into tolling arrangements, consistent with the terms set forth in Schedule 5, permitting [plaintiff] to deliver third-party LNG to Seller's Facilities." (GSA § 22.12.1). This is commonly referred by the parties as a "tolling agreement."

4. Under a tolling arrangement, natural gas for San Juan Units 5 and 6 would come from the LNG vessel of a third-party supplier (the "Terminal User" under Schedule 5 of the GSA) moored

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at NFE's pier, re-gasified through NFE's facilities, and delivered through the metering stations to the units. Third-party LNG can reach San Juan Units 5 and 6 only in this way. See, Docket No. 24-10, p. 2.

5. NFE's Amur River LNG carrier moored on the morning of October 13, 2026. It will run out of natural gas at approximately 1:00am on October 30, 2026. See, Docket No. 25-1.

6. Since then, NFE has only supplied LNG to San Juan Unit 6 but has failed to provide LNG to San Juan Unit 5, being silent in the face of requests for information. See, Docket No. 24-10, pp. 3-5.

7. NFE has not answered plaintiff's requests for information on the arrival of the next vessel carrying natural gas. See, Docket No. 24-10, p. 5. NFE has not given any notice to plaintiff as required by Sections 2.4.3(b), 4.4.1., 11.4, or 22.12.3. See, Docket No. 24-10, p. 5. In the face of this imminent shortfall, plaintiff formally asserted activation of the tolling arrangement provision of the GSA on October 24, 2026.

8. A third-party supplier is "ready, willing, and able" to supply LNG once NFE makes its facilities available. See, Docket No. 24-9. It can begin ISO container deliveries (i.e. truckload LNG deliveries) to the TM2500 and Palo Seco units "within one day," and vessel deliveries to Units 5 and 6 "within three to twenty days"; and it needs three things from NFE: confirmation that its facilities are available, a designated representative, and NFE's operating procedures and vessel criteria. Id., ¶¶ 4-5, 7-9, 12.

After careful consideration of these facts, the court concludes that plaintiff has shown a substantial likelihood of success on the merits of its claim that the circumstances of Section 22.12.1 of the GSA have taken place, under prong (A) or prong (B), and NFE is therefore obligated to enter into tolling arrangements.

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Irreparable harm is harm that cannot adequately be remedied “either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy.” Rio Grande Cmty. Health Ctr., Inc. v. Rullan, 397 F.3d 56, 76 (1st Cir. 2005). Here, the failure to provide LNG would force the generation units to use diesel. And diesel operation reduces efficiency by 2 to 3 percent and available capacity by approximately 10 percent, accelerates wear, and increases the risk of forced outages. See, Docket No. 24-10, p. 5. In this light, maintaining LNG supply to San Juan Harbor is critical to ensure cost-effectiveness and reliability of the generation at San Juan and Palo Seco. See, Docket No. 22-31. On this count, the court agrees with Judge Antongiorgi-Jordán that while “reduced efficiency and accelerated wear on facilities and machinery may be compensable through monetary harm, the compromised reliability of Puerto Rico’s electrical grid plainly constitutes irreparable harm.” Civil No. 26-1621, Docket No. 18, p. 5 (citing California Independent Sys. Operator Corp. v. Reliant Energy Servs., Inc., 181 F.Supp.2d 1111, 1121 (E.D. Cal. 2001) (ruling that the threat of rolling blackouts and short supply of electricity constitutes irreparable harm); see also, RENEW Northeast v. United States Dep’t of Interior, 2026 WL 1078282, *31 (D. Mass. Apr. 21, 2026)).

Finally, the burden on NFE that would be imposed by the limited remedies sought by plaintiff are far outweighed by the irreparable damage that looms once the Amur River runs of LNG tomorrow at 1:00am. So, in sum, the requirements for a TRO are satisfied. NFE has already appeared in this case and the CM/ECF system has given its attorneys notice of the remedies sought by plaintiff. See, Docket Nos. 11, 19-20. As such, the Plaintiffs request for a TRO is GRANTED, according to the terms set forth below:

(a) within **twenty-four (24) hours** of this Order, NFE shall inform in writing to the Puerto Rico Public Private Partnerships Authority (“P3A”), through the Third-Party Procurement Office (“3PPO”), and to Genera PR LLC the volume of LNG aboard

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the Amur River, its projected exhaustion date and hour, and the identity, cargo volume, and expected arrival date of the next vessel for the San Juan terminal, if any;

(b) within **twenty-four (24) hours** of this Order, NFE shall inform in writing to P3A, through the 3PPO, whether each of the following is available to receive, regasify, and redeliver LNG supplied by a third party for plaintiff: (i) the San Juan LNG terminal and jetty; (ii) the unloading arms; (iii) the regasification equipment; (iv) the pipelines to San Juan Units 5 and 6 and to the San Juan TM2500 units; (v) the truck-loading facilities and equipment for LNG delivered by ISO container; and (vi) the facilities serving the Palo Seco units; and, for any that NFE contends is not available, identify it and state the reason. For purposes of this order, a facility is “available” if it is physically and operationally capable of receiving, regasifying, or redelivering third-party LNG within the next thirty (30) days, without regard to any commercial term not yet agreed;

(c) within **twenty-four (24) hours** of this Order, NFE shall designate in writing to P3A, through the 3PPO, a representative with authority to act for NFE on the matters in this order, with a telephone number and e-mail address at which that person can be reached at all times;

(d) within **seventy-two (72) hours** of this Order, NFE shall deliver to P3A, through the 3PPO, copies of the written procedures NFE applies at its San Juan terminal for (i) scheduling and nominating LNG deliveries, (ii) berthing and mooring LNG vessels, (iii) receiving LNG by ISO container, (iv) measuring and testing the quality of LNG received, and (v) transferring title to LNG, together with the written criteria NFE uses to determine whether an LNG vessel is compatible with its San Juan terminal, and, where any procedure or criterion is not written, a written description sufficient to permit compliance; and

(e) NFE shall refrain from entering into any agreement, or taking any other action, that would prevent or delay the receipt at NFE’s facilities of LNG supplied by a third party for plaintiff, and from conditioning that receipt on Plaintiff’s payment of disputed invoices or on payment “without any offset, netting, or other deduction.”

BOND ORDER

Fed. R. Civ. P. 65(c) conditions the issuance of a TRO on the movant giving security “in an amount that the court considers proper” to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Hence, this rule vests district courts with “wide discretion” to determine the amount of the bond. Axia NetMedia Corp. v. Massachusetts Tech. Park Corp., 889 F.3d 1, 11 (1st Cir. 2018). Given the small cost to NFE due to providing the information

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in writing ordered by the TRO and simply refraining from entering into any agreement, or taking any other action, that would prevent or delay the receipt at NFE's facilities of LNG supplied by a third party, the court concludes that a nominal bond amount is justified. So, the Court ORDERS that plaintiff shall deposit with the Clerk of the Court, by no later than **November 2, 2026**, an undertaking in the form of a bond or certified check totaling **\$1,000.00**, for the payment of those costs and damages which may be incurred or suffered by defendants if those were found to have been wrongfully enjoined or restrained or any of their property wrongfully seized. This amount may be adjusted after the pending hearing takes place.

DURATION OF TEMPORARY RESTRAINING ORDER

This TRO will expire fourteen (14) days from its entry in accordance with Fed. R. Civ. P. 65(b)(2) unless, for good cause shown, this Order is extended or NFE's consent that it should be extended for a longer period of time. The Court may, on demonstration of good cause by any party-of-interest, shorten or lift this Order.

SO ORDERED.

In San Juan, Puerto Rico, this 30th day of October 2026, at 5:10 pm.

s/Pedro A. Delgado-Hernández
PEDRO A. DELGADO-HERNÁNDEZ
United States District Judge