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May 16, 2011

The Honorable John M. McHugh
Secretary, U.S. Army
101 Army Pentagon
Washington, D.C. 20310

Dear Secretary McHugh:

Thank you for prompt response to my April 6, 2011 letter related to the *Via Verde* natural gas pipeline project in Puerto Rico. As you will recall, the Puerto Rico Electric Power Authority (PREPA) is seeking a Section 404 permit from the U.S. Army Corps of Engineers (USACE) for the construction of a natural gas pipeline spanning the width of Puerto Rico and traversing thousands of acres of sensitive ecosystems, forest, and water resources. I have the utmost respect for the U.S. Army Corps of Engineers and wish to call your attention to new developments that could reflect badly on the Corps by raising the appearance of impropriety. I write to bring these and other new developments to your attention and to reiterate my call for a thorough, transparent, and fair vetting process for this project.

Since I last wrote you, events involving the USACE Jacksonville District, key current and former personnel, and hired consultants for those hoping to construct the pipeline have come to light in the press that demand your immediate and personal attention.

First, it was recently announced that decisions made about permits and any further studies of the project would be removed from the Puerto Rico office and decision-making would happen solely at the USACE Jacksonville District. This is an unwelcome development because it gives the people of Puerto Rico even less direct ability to have input on the permit process of the project.

More disturbing is the appearance of a potential conflict of interest involving the USACE Jacksonville District. Recent news articles suggest that BCPeabody consultants remain intimately involved in the permit evaluation process. This is a direct contradiction of earlier statements made by PREPA, which denied in the press that BCPeabody is under contract with it on the pipeline project. I have documents that show not only BCPeabody's extensive involvement, but that BCPeabody has been formally designated by PREPA to represent it "in any matter regarding the Joint Permit Application for the *Via Verde* project."

Documents received via the Freedom of Information Act from the Fish and Wildlife Service clearly demonstrate extensive involvement by BCPeabody employees with Commonwealth of

Puerto Rico and federal officials regarding the pipeline. I received copies of emails between Lawrence C. Evans and several other BCPeabody employees and numerous officials with roles in the regulatory process. According to Mr. Evans' bio on the BCPeabody website, he was "Chief of Regulatory Division for the Jacksonville District" of the Corps. I am still waiting for the full compliance of USACE to my FOIA request, but the information that has surfaced so far is enough to raise concerns about a potential conflict of interest in having a for-profit company such as BCPeabody with former high ranking USACE staff, working directly with USACE staff who might have previously been their subordinates.

I remember all too well the information that surfaced after the BP Gulf of Mexico disaster, when President Obama himself vowed to put an end to what he called a "cozy relationship between the oil companies and the federal agency that permits them to drill." The President added, "It seems as if permits were too often issued based on little more than assurances of safety from the oil companies." Mr. Secretary, we need to make sure that if an accident or explosion occurs involving the proposed pipeline in Puerto Rico, it will be shown that USACE used all of the powers at its disposal to guarantee the public's and the environment's safety.

Furthermore, I am concerned about news reports in Puerto Rico that Col. Alfred Pantano, Commander of the USACE Jacksonville District, indicated that a decision on the permits for the pipeline should be rendered by the USACE within a matter of months. He reportedly said that the construction of the pipeline will have a relatively modest environmental impact. Both of these comments lead me -- and others -- to conclude that he has already made up his mind.

This is disturbing and unacceptable for a number of reasons. First, he seems to be dismissing the potential impact on people and the environment of the 92-mile gas pipeline project. The 24-inch diameter steel pipeline will be built over mountains and bodies of waters near and through populated areas, and on a seismically active island. To say that the environmental impact will be minimal before first having conducted a comprehensive, thorough and complete federal Environmental Impact Statement (EIS) is irresponsible.

I am further troubled by statements made to the press, also attributed to Col. Pantano, to the effect that the power company, PREPA, had provided the Corps with all the information necessary to make its decision. But the Corps' Lt. Col. Michael Kinard, in a letter to the Environmental Protection Agency (EPA) dated April 13, 2011 (attached), said this was information the Corps had not received. The statements attributed to Col. Pantano are also at odds with those made by EPA Assistant Secretary Jo-Ellen Darcy in her letter to me (on April 26, 2011), in which she claimed decisions regarding public hearings and the need for an EIS would be made once the Corps receives "all of the required and pertinent" information from PREPA.

To me, the appearance that private consultants recently employed by the power company have close ties to the USACE Jacksonville District; that the man in charge of the Jacksonville District appears to have made up his mind and has told the press as much; and the removal of all decision-making from the Caribbean/Puerto Rico office in favor of the Jacksonville District is very troubling, at the very least, and requires your personal attention.

These serious issues are only exacerbated by the absence of an Environmental Impact Statement -- which is absolutely essential before this project moves forward; the lack of any serious public hearings on the pipeline project; numerous complaints from elderly residents that the pipeline project's employees are using deceptive and intimidating tactics to gather land rights; and the epidemic lack of transparency of the ruling party of Puerto Rico that is deeply tied to this massive construction project.

In the interest of transparency, democracy, safety, and peace of mind for the residents of Puerto Rico, I respectfully request the following:

- 1) All records pertaining to why the decision-making process was moved from the Caribbean/Puerto Rico office to the Jacksonville District;
- 2) All records related to connections and communications between BCPeabody, the USACE Jacksonville District, PREPA, and other interested parties and an investigation on your part as to whether the apparent conflict of interest has basis in fact;
- 3) A clarification of USACE policy about whether senior regulatory officials are acting appropriately when they publicly disclose that a regulatory decision has been made before all the evidence has been received by the agency;
- 4) That my continued request for an Environmental Impact Statement, a thorough, and transparent process of evaluation, and public hearings be duly noted and acted upon.

The safety of four million U.S. citizens who reside in Puerto Rico is at stake. I call on you to ensure all laws, rules and regulations are followed -- in addition to common sense -- and to ensure public safety and the integrity of their environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Luis V. Gutiérrez", with a stylized flourish at the end.

Luis V. Gutiérrez
Member of Congress

Enclosure (1)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. Box 4970
JACKSONVILLE, FLORIDA 32232-0019

APR 13 2011

Regulatory Division

Mr. Carl-Axel P. Soderberg
Caribbean Environmental Protection Division
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue, Stop 22
San Juan, PR 00907-4127

Dear Mr. Soderberg:

This letter acknowledges yours dated April 1, 2011, regarding the Via Verde Natural Gas Pipe Line proposal currently under review by Department of the Army permit application number SAJ-2010-02881. We were extremely surprised by the conclusions made by your agency considering that much information is still forthcoming on this project. We take exception to the contents of the letter, the analysis therein contained, and its conclusions.

It appears the EPA was provided with privileged information by the PREPA, as expressed repeatedly in your letter. It concerns me that the Corps was not involved in any of the exchanges of information and/or meetings that took place between the applicant and your agency, as the Corps has primary and ultimate authority over the Via Verde application. The applicant has not submitted all required information to properly address the alternative analysis, avoidance and minimization, compensatory mitigation, public interest, endangered species, historical properties, and impacts to federal projects. With that said, the Corps considers it to be premature to render a decision if the NEPA process could be concluded with a mitigated FONSI or an EIS, or even to imply that this project is permissible.

Thus I am requesting that privileged information in the hands of EPA be provided to the Corps. Please feel free to call me reference this subject at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "D. W. Kirard", is written over the typed name.

Donald W. Kirard
Chief, Regulatory Division