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Hon. Alejandro García Padilla 1/14

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December 20, 2010

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SAN JUAN, PUERTO RICO


José M. Rosado
Deputy District Engineer for the Antilles
US Army Corps of Engineers Antilles Office
400 Fernández Juncos Ave.
San Juan PR 00901-3299

Jose.m.rosado@saj02.usace.army.mil
Sindulfo.castillo@usace.army.mil

RE: Permit Application No. SAJ- 2010-02881 (IP-EWG); *Via Verde* Pipe-line Project

As a Member of the Senate of the Commonwealth of Puerto Rico I must express my serious concerns regarding the so-called “*Via Verde*” gas pipeline project, also known as the *Gasoducto del Norte*.

Natural gas could be part of a transition into a greener and more sustainable energy portfolio for Puerto Rico, but that is not the issue at stake.

The true question before us is **whether a major government action should be approved without serious scrutiny, both economic and environmental.**

The gist of the Puerto Rico Electric Power Authority’s (PREPA) economic viability argument is its claim that the project shall cost only \$447 million dollars, to be financed by bond (debt) sale, and that once operational it will lower the island’s high per kilowatt hour energy costs, currently from around 21 cents to 12

Capitolio
Apartado 9023431
San Juan, Puerto Rico
00902-3431
Voz: 787•723•4822
787•723•4763
Fax: 787•724•2267

senadorgarciapadilla@gmail.com



cents kilowatt hour in 2015, concomitantly lowering a client's monthly fuel adjustment electric bill item by around 20%.

Firstly, PREPA's \$447 million cost estimate is underestimated and misleading. Even accepting, for argument purposes, the extraordinary assumption that the project will not go substantially over-budget (a highly unlikely scenario given our past experiences with major government projects which doubled in cost along the way), the project overstates Puerto Rico's capacity to use natural gas as an energy source; fails to consider the cost of endangered species habitat mitigation, and thus plainly misstates the consumer level bill savings, if any, that will ensue.

Overstated capacity to use natural gas, lower client savings.

According to PREPA once *Via Verde* is approved, the cogenerating plant known as EcoEléctrica would supply enough natural to generate more than 70% of Puerto Rico's electric power. However it is known that said installation's current capacity to convert liquefied natural gas into usable gas form is around 77.4 million cubic feet per day which would be good for little more than 15% of the island's energy needs.

PREPA's electric service rates consist of (a) basic charges, made up of demand, client and energy related charges, (b) fuel adjustment charges designed to recover the cost of fuel oil purchased by PREPA; and (c) purchased power charges to recover cost of power purchased from cogenerators (EcoEléctrica and AES-PR) by PREPA.

Using 2008 gas prices, EcoElectrica's 15% energy generation capacity would translate to around \$50 million dollar yearly savings on oil purchases, not a substantial amount.

Given these numbers, even though PREPA claims a 20% consumer-level bill savings, the fact that only the fuel purchase adjustment bill item would be affected, experts have already concluded that consumers would not receive electric bill savings higher than 11% [UPR-Mayagüez economist José Alameda and Center for the New Economy policy director Sergio Marxuach.]

Even in the unlikely event that said cogenerator eventually tripled its regasification capacity, only about 45% of the island's energy needs would be covered, well below the 70% level claimed by PREPA, correlatively reducing the claimed savings associated to non-purchase of oil, substantially.

Mitigation costs not fully considered.

The project's alleged \$447 million price-tag also fails to factor in monetarily quantifiable environmental costs. As proposed by PREPA, this project is a 92 mile long, 150 feet wide corridor, more than 1,672 acres (1,721 *cuerdas*) of affected terrain, directly impacting 235 rivers, at least 369 acres (380 *cuerdas*) of



federally protected wetlands, and at least 32 threatened and/or endangered species of fauna and flora protected under Puerto Rico and federal laws, including the Puerto Rican Nightjar (*Caprimulgus noctitherus*), the Puerto Rican parrot (*Amazona vittata*), the Puerto Rican crested toad (*Peltophryne lemur*), Puerto Rican boa (*Epicrates inornatus*), Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*), Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*), and Puerto Rican plain pigeon (*Patagioenas inornata wetmorei*).

However, PREPA's official position regarding mitigation in this process, as transcribed from the Corps public notice for this case is that "[g]iven the temporary nature of impacts expected to occur from construction, the applicant expects any such mitigation required by the U.S. Army Corps of Engineers (Corps) to be at or below 0.01 acres of compensatory mitigation per 1 acre of temporary wetland impacts." No detailed estimate of affected species and/or critical habitat mitigation costs is proffered.

Judging by mitigation requirements imposed by the United States Fish and Wildlife Service (USFWS) in previous cases with drastically inferior environmental footprints, *Via Verde's* environmental mitigation costs would reach and probably surpass the hundred-million dollar range. For example, in a 725-acre (746 *cuerdas*) property in Guayanilla were a proposed wind energy farm's impact would be the widening of 8.7 km of existing roads, sitting of 1.4 km of new roads, and the land preparation for wind turbine projected footprints would affect a potential maximum of 30.1 acres (30.9 *cuerdas*), USFWS approval of the project rested on a mitigation plan that would perpetually protect nearly 518 acres of land (533 *cuerdas*) in a conservation easement—a monetarily valued real estate transaction—, and thus USFWS applied a mitigation factor of more than 17:1, compensating for impacts to dry forest habitat at a rate beyond 1700%. Only two endangered and one threatened species of fauna were reported at that site: the Puerto Rican nightjar (*guabairo*), the recently de-listed brown pelican (*pelicano pardo*) and the threatened roseate tern (*palometa*). Note that USFW imposed similar mitigation requirements to the original, smaller, *Gasoducto del Sur* prior to its approval, and given their recent opinion in this process, it is highly unlikely that USFWS will accept lesser mitigation compensations than those established by it in the past.

By simply calculating the acreage of earth to be moved, *Via Verde's* impact on land would be more than 50 times larger than the aforementioned Guayanilla wind farm. Logically, it would seem that a land conservation easement of more than 10,000 acres could be appropriate, especially considering that a greater number of species will be affected—including the nightjar (*guabairo*), the Puerto Rican crested toad (*sapo concho*) and the Puerto Rican parrot (*cotorra*)



puertorriqueña)-, and given the fact that the pipeline might also affect areas designated as karst. Such a real estate transaction by itself would be in the hundred million dollar range.

Note that these mitigation costs leave out recurrent species and habitat management/conservation plans, which entail long term highly specialized scientific field work and related reporting to concerned agencies such as USFWS, among others.

More importantly, wetland mitigation measures will probably be imposed by the Corps under the Clean Water Act (33 U.S.C. § 1251, *et seq.*) (CWA), measures whose compensation ratio depends on the classification of the wetland and the degree of proposed environmental impact, and range from no net loss of wetland, to high ratios of 10:1 and beyond, depending the associated ecology and biodiversity. Thus, costly land acquisitions to create (mitigate) new wetland habitats would be required, a situation not factored into PREPA's plans, given its official position that wetland impacts will be temporary and that mitigation required will be "below 0.01 acres of compensatory mitigation per 1 acre".

A word of caution.

The Preliminary Environmental Impact Statement (P-EIS) for the *Via Verde* Pipeline was filed before a so-called Interagency Sub-Committee for Fast-Track Environmental Compliance (*Sub Comité Interagencial de Cumplimiento Ambiental por Vía Acelerada*) in late November 2010. Then on November 30, it was 'considered' by the Puerto Rico Environmental Quality Board (EQB) which approved the EIS as final on December 1st. Just two days later, Puerto Rico's Planning Board then approved the project's site or land-use consultation (*consulta de ubicación*). This hurried approval process was conducted under the terms of an executive order by Gov. Luis Fortuño declaring a supposed "energy emergency."

Haste makes waste. This maxim is of particular relevance in regard the rational and responsible management of our island's limited natural resources, and is an aptly fitting reminder of how to deal responsibly with the task at hand.

Since 1952, our Constitution states as official, binding policy, the Commonwealth's duty "to conserve, develop and use its natural resources in the most effective manner possible". Furthermore, Puerto Rico's Environmental Public Policy Act (Act No. 416 of 22 September 2004, 12 L.P.R.A. § 8001, *et seq.*, establishes the Commonwealth's obligation to enforce "the precautionary principle" that regardless of uncertainties, rational measures proportional to the



seriousness of the potential environmental harms must be effected, in order to avoid or diminish said potential harms.

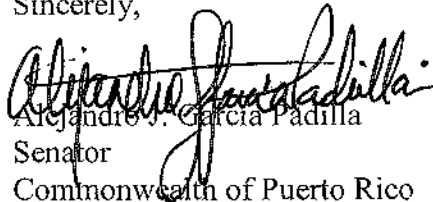
Corps of Engineers norms also demand caution. As such, per its Environmental Operating Principles (EOP) and applicable Program Management Plans (PgMPs), the Corps must:

1. Strive to achieve Environmental Sustainability. Environmental Sustainability may be described as the state of the environment that meets the needs of the present generation without endangering the ability of future generations to be able to meet their own needs. An environment maintained in a healthy, diverse and sustainable condition is necessary to support life.
2. Recognize the interdependence of life and the physical environment. Proactively consider environmental consequences of Corps programs and act appropriately in all circumstances.

Furthermore, in order for a permit to be issued under the CWA (33 U.S.C. § 1344) such as the one sought in this administrative process for "*Via Verde*", the applicant must establish that (1) there is no practical alternative to the proposed activity that would have less impact on the aquatic ecosystem; (2) the proposed activity will not have significant adverse impact on aquatic resources; (3) all appropriate and practicable mitigation will be employed (4) the proposed activity will not violate other state, Commonwealth, or federal laws (40 C.F.R. § 230.10); (5) the proposed activity is not contrary to the public interest, considering factors such as effects on wildlife, the environment, among others (40 C.F.R. § 320.4).

I urge the Corps of Engineers to consider the foregoing statements. At the least, the Corps should initiate formal evaluation proceedings so that *Via Verde*, the South to North *Gasoducto* is adequately and sufficiently scrutinized, so that a proper cost-benefit analysis that is proportional to its expected high environmental and economic impact is performed before undertaking the action.

Sincerely,


Alejandro J. García Padilla
Senator
Commonwealth of Puerto Rico

