

EnergyAnswers Arecibo

March 21, 2017

John Filippelli, Director
USEPA Region 2
Clean Air and Sustainability Division
290 Broadway
New York, NY 10007-1866

Subject: Energy Answers Arecibo, LLC
Request for Prevention of Significant Deterioration Air Permit Limited Extension

Dear Director Filippelli:

Energy Answers Arecibo, LLC (EAA) has been working diligently to commence construction of the Arecibo Resource Recovery Facility (Arecibo RRF, or the Project) by the April 10, 2017 extended Prevention of Significant Deterioration (PSD) permit Effective Date deadline; however, as discussed below, EAA has experienced significant procedural and financial impediments that continue to restrict our practical ability to commence construction of the Project, as this is defined under PSD regulations. Although we continue to work towards beginning construction as soon as possible, and in advance of the permitted deadline, we are requesting a limited extension of the current deadline for commencing construction. We are making this request as a practical matter, considering the uncertain timing of the completion of the necessary procedural steps for securing federal funding, which are steps that are beyond EAA's control, yet directly influence the timeline by which EAA will be able to embark on a program of continuous construction of the project.

At this time, we are prohibited from commencing a program of continuous construction due to the onsite construction restrictions associated with the National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) review, which is currently being conducted by the USDA Rural Utilities Service (RUS). This process commenced on November 28, 2014 (28 months ago), with the publication in the Federal Register of a Notice of Intent to prepare a Draft EIS, and has advanced slowly, but steadily since that time, with the Final EIS being issued for public review and comment on February 22, 2017. Due to the Limitations on Actions During the NEPA process stipulated in 7 CFR Section 1794.15, which states that "until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process", the work that can be conducted on the project site prior to the issuance of the RUS Record of Decision (ROD) and without putting the Project at the risk of becoming ineligible to participate in the RUS loan program, is consequently very limited.

The declining economic climate in Puerto Rico, due to the well documented ongoing economic crisis and below-investment-grade credit ratings of Puerto Rico's debt and that of the Puerto Rico Electric Power Authority (PREPA), has limited the sources of funding available to projects of the size and complexity of

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the Arecibo RRF, and made it necessary for EAA to pursue a federal loan through RUS. The RUS loan program remains one of the few, if not only, potential sources of debt available to this Project under the current economic conditions. These circumstances have presented a significant and extraordinary financial impediment to proceeding with project financing and construction as originally expected. EAA is now in a position wherein commencing on site construction prior to the issuance of a ROD would put the RUS loan at risk, and consequently, put the entire project at risk. As of the date of this letter, the ROD has yet to be issued.

Additionally, the NEPA onsite construction restriction is preventing the Project from commencing and completing the tasks needed to activate one of the previously approved and currently effective local environmental permits. Specifically, the Project must complete limited demolition activities on the Project site and on the adjacent property in order to receive its previously approved Conditional Letter of Map Revision (CLOMR) from FEMA. The issuance of the FEMA CLOMR, is a prerequisite condition to the Puerto Rico Planning Board Siting Consultation. With the issuance of the FEMA CLOMR, all Project federal and local permits necessary to commence construction will be approved, issued, effective and active.

The negotiation of the Project's Engineering Procurement and Construction (EPC) contract, which provides a program of continuous construction through the completion of the Project, is in an advanced stage, and execution of a final agreement is expected within the next few weeks. Although most of the terms and conditions of the EPC contract were negotiated years ago, the fact that this is a fixed price contract with a guaranteed in-service date, means that the EPC contractor assumes substantial risk with regards to the accuracy of both the price and schedule set in the contract. Consequently, to ensure that all critical contract cost and schedule elements are accurate and current, the EPC contractor seeks to complete the contract as near to the start of construction as possible, thus tying the execution of the EPC contract to the ability to commence construction.

It is important to note that prior to the onset of the economic and fiscal crisis facing Puerto Rico and the associated extraordinary financing impediments, EAA was prohibited from commencing construction, and was required to seek an extension due to the legal challenges filed against the Project's PSD permit. The legal challenges were not resolved until June 2016, only after the successful defense of the PSD Permit at the DC Circuit Court of Appeals concluded and the request for an en banc reconsideration was denied.

With respect to the proposed emissions control equipment technologies, pollution prevention measures, and good engineering practices, which together constitute the Best Available Control Technology (BACT) for the Project, this combined control system remains the most effective BACT controls for the Project. In advance of this request, our project team reviewed the EPA RACT/BACT/LAER Clearinghouse (RBLC) database and other industry sources, for the issuance of PSD permits after the Arecibo RRF Permit was issued. This exercise confirmed that there is no evidence of advancements in air pollution control technologies or regulatory standards that would indicate that BACT for large scale Municipal Waste Combustion (MWC) units would be any different from what is specified in the Arecibo RRF PSD Permit. In fact, the RBLC database continues to indicate that the Arecibo RRF is the most recent PSD project and BACT determination for the large MWC source category. In addition, it was confirmed with the Energy Recovery Council that there have been no new or modified large MWCs or waste-to-energy facilities permitted since the Arecibo RRF PSD permit was issued, which

further supports the fact that the BACT controls specified in the Arecibo RRF PSD permit continue to be current and effective for minimizing emissions of regulated air pollutants from large MWCs.

Also, it is important to note that the RUS NEPA EIS review, which incorporates the PSD permit as part of the document, has undergone a rigorous review process, which has included a Scoping meeting held on January 28, 2015, a Draft EIS (DEIS) public hearing held on August 20, 2015, which was accompanied by an extended public comment period of 97 days, which was further extended by 11 days to accommodate a request by Regional Administrator Enck. In addition to these public participation opportunities, the RUS FEIS underwent a 30-day public comment period that ended on March 6, 2017, within approximately two weeks of the submittal of this letter. During the DEIS review, there were no comments on the BACT controls or PSD permit conditions that brought into question whether they represent the most current and effective emission control methods or technologies.

It is the Project's intention to commence limited test pile/foundation work prior to the April 10, 2017 permit Expiration Date and execute the EPC Contract as quickly as possible, also likely before the April 10, 2017 Expiration Date. Upon the issuance of a favorable RUS ROD, the Project will commence the essential demolition work necessary to activate the Project's local construction permits. In summary, the Project intends to follow the milestone target schedule detailed below:

Project Milestones	Target Date	Delayed Date
EPC Contract Executed	March 31, 2017	
Commencement of Phase I work (FEMA Onsite work and test piles)	April 7, 2017	
RUS ROD Issued	April 14, 2017	April 28, 2017
FEMA CLOMR Issued	June 16, 2017	July 7, 2017
RUS Loan Commitment Letter Issued	July 14, 2017	August 4, 2017
Commencement of Phase II work (Fill & Foundation Work)	July 21, 2017	August 18, 2017
EPA Notification of Construction Start	July 28, 2017	September 1, 2017

Finally, although it is outside of the scope of the specific governing regulations, it is our hope that your evaluation of our request takes into consideration the fact that:

- 20 of Puerto Rico's 28 landfills are not, and cannot, meet Sub-Title D regulations,
- The average age of Puerto Rico Electric Power Authority's generating facilities is over 45 years, with many of these facilities needing renovations and/or fuel conversions to effectively meet EPA emission standards,
- Puerto Rico's recycling rate has remained below 15% for approximately 20 years and less than 5% of the energy generated in Puerto Rico is renewable energy, and finally,
- Puerto Rico is going through a historic economic crisis.

And know that the proposed Arecibo RRF will:

- Provide fully compliant solid waste management capacity for over 20% of the MSW generated in Puerto Rico,
- Add greatly needed renewable energy generation capacity to PREPA,
- Provide a major net reduction in GHG generation and will recover over 200 tons per day of recyclable metals that would otherwise be lost to landfills, and

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- Be the largest single economic development project in Puerto Rico's Fiscal Plan, providing thousands of construction jobs and hundreds of permanent jobs.

As our record shows, we have been working diligently since the issuance of the PSD permit and have spent over \$20 million obtaining all of the necessary contracts and approvals necessary to commence construction. We were hopeful that we would have been able to commence construction prior to the April 10, 2017 deadline, but the need for the federal loan program due to the economic climate in Puerto Rico and the slow pace of the NEPA EIS review, have made meeting that date less certain at this time. EAA continues to work toward reaching the commencement of construction as soon as practical. Notwithstanding the uncertainty related to the timing of the RUS ROD and the conclusion of the NEPA process, we expect that construction will commence within no more than five (5) months from the April 10, 2017 deadline. Therefore, we respectfully request a five (5) month extension to the Effective Date deadline for the commencement of construction of the Project.

Should you have any questions or require additional information, please contact me directly at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark J. Green", with a long horizontal flourish extending to the right.

Mark J. Green
Vice President
Energy Answers Arecibo, LLC