

Porzio Handles Jones Act Work for Puerto Rico

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MORRISTOWN, N.J. – Last week, Porzio, Bromberg & Newman Principals William J. Hughes, Jr., and John P. Oroho represented the Commonwealth of Puerto Rico in preparing and filing an application for a limited Jones Act waiver.

The Jones Act, also known as the Merchant Marine Act of 1920, requires that any shipments between two points in the United States must occur on vessels that are registered in the United States, built in the United States, owned by United States citizens, and manned by U.S. Merchant Seamen. These vessels are known as "Jones Act eligible vessels."

Currently, Puerto Rico has some of the most expensive energy costs in the nation (between two and three times the national average). In September 2017, after Hurricane Maria – the strongest storm to make landfall in Puerto Rico in 85 years with sustained winds of 155 miles per hour – Puerto Rico's electrical grid was critically damaged, and substantial repairs are ongoing. Following the recommendations of the U.S. Department of Energy and a bi-partisan Congressional Task Force, the Puerto Rico Electric Power Authority (PREPA) is converting most of its power generators from diesel fuel to natural gas. This conversion will result in substantial costs savings for the citizens of, and businesses in, Puerto Rico, and it is considered a necessary first step in a larger plan for the island to rely more heavily upon renewable energy sources, such as solar and wind power. The entire project is a central part of the rebuilding of Puerto Rico's economic and physical infrastructure.

The application – filed by Hughes and Oroho on behalf of the Commonwealth and Governor Ricardo A. Rossello Nevaes, PREPA, and the Economic Development Bank for Puerto Rico – seeks a ten-year limited waiver of the Jones Act solely to permit the shipment of natural gas purchased in the United States for Puerto Rico via foreign-flagged Liquefied Natural Gas (LNG) carriers. The law permits the Department of Homeland Security (DHS) and the Department of Defense (DOD) to grant certain types of waivers, and the former waived the Jones Act at least twice in the immediate wake of Hurricane Maria for national security reasons.

Of the 478 LNG carriers that currently exist in the world, none are Jones Act eligible vessels, and none are owned by U.S. citizens or registered in the United States. The application conditions the limited waiver upon the continued unavailability of Jones Act eligible LNG carriers. If a Jones Act eligible LNG carrier becomes available, the limited waiver simply would expire.

Absent a waiver, PREPA and Puerto Rico could not purchase U.S.- produced natural gas and would be forced to enter into long-term purchasing contracts with foreign sources of supply.

"This collaborative effort puts in place a long-term solution to a critical infrastructure need for Puerto Rico as it continues to rebuild from Hurricane Maria," stated Hughes. "This is a win-win situation for everyone involved."

The Porzio application outlines how a limited waiver of the Jones Act would be in the United States' economic security and national defense interests. For instance, according to the Food and Drug Administration, 8% of all purchases of pharmaceuticals in the United States are for drugs that are manufactured in Puerto Rico, some of them exclusively.^[i] In the wake of Hurricane Maria, there was a critical shortage of saline intravenous bags throughout the entire United States due to manufacturing disruption caused by Puerto Rico's power grid failure. A limited waiver will provide for a more stable, economical, and efficient source of fuel supply for PREPA and these manufacturers, which will also allow PREPA to continue to reinforce and upgrade its power transmission capabilities. Additionally, a limited waiver that expires when a Jones Act eligible vessel becomes available will create incentives for U.S. shippers to invest in the construction and commissioning of Jones Act eligible LNG carriers, currently absent from the U.S. Merchant Marine fleet.

"Porzio began helping Puerto Rico in the months before Hurricane Maria, but this extraordinary disaster has made our efforts even more critical," said Vito A. Gagliardi, Jr., managing partner of the law firm. "It is a privilege to be able to assist in this important infrastructure solution that will help our country, Puerto Rico's residents, and all the major industries located in Puerto Rico that rely on a cost-efficient energy source."

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[i] U.S. FOOD AND DRUG ADMINISTRATION, Securing the Future for Puerto Rico: Restoring the Island's Robust Medical Product Manufacturing Sector (Nov. 3, 2017), <https://www.fda.gov/downloads/NewsEvents/Newsroom/FDAInBrief/UCM584030.pdf>.