



ISSUE BRIEF | Center for Energy & Environment

PUERTO RICO & THE JONES ACT— THE URGENCY OF MODERNIZING ENERGY POLICY

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MAIN POINTS

- Puerto Rico has suffered catastrophic damage to its energy infrastructure from Hurricane Fiona—hurricanes and tropical storms pose an annual threat to the energy security of the island.
- As of September 20, 2022, nearly the entire island of Puerto Rico is without power, affecting over 3 million citizens and 1.3 million homes.
- President Joe Biden has declared a state of emergency but has yet provide lasting relief for Puerto Ricans, by addressing the Jones Act.

On Sunday, Sept. 18, 2022, Hurricane Fiona arrived in the Commonwealth of Puerto Rico, a territory of the United States—with a devastating impact on the lives of more than 3.2 million Puerto Ricans. As a Category 1 Hurricane, Fiona is the first hurricane in the Caribbean and Gulf hurricane season of 2022. The impact of Fiona serves as a reminder of the devastating hurricane that struck Puerto Rico in late September 2017—Hurricane Maria. That Category 5 hurricane left Puerto Rico without a functioning power grid for months, caused billions of dollars in damage to infrastructure, and significant death in the wake of its destruction.

On Sept. 18, President Biden declared a state of emergency for the island of Puerto Rico to expedite relief efforts and speed up resources and supplies to the Puerto Rican people. However, President Biden has yet to take executive action in pursuing an emergency waiver of Section 27 of the Merchant Marine Act of 1920, more commonly known as the Jones Act. Nor has the Biden Administration called upon Congress to address the inherent and predictable risks associated with the Jones Act's regulation of vital commodities, thereby ensuring avenues for relief for Puerto Rico—the very relief constrained by the sweeping restrictions of the Jones Act. The Jones Act is a maritime doctrine that, currently, prohibits foreign vessels from traveling from one United States domestic port to another. This means that any international vessels currently docked at a U.S. port are, by law, prohibited from traveling to and providing Puerto Rico with any goods or assistance, unless they first travel to a non-U.S. port before chartering a course to Puerto Rico.

Moreover, there is a severe shortage of U.S. Jones Act-compliant vessels for additional domestic deliveries. These shortages highlight the need for affordable shipping options to offer energy and humanitarian relief to Puerto Rico, options that the United States domestic fleet cannot provide. Currently sitting at fewer than 50 vessels capable of relieving the island's energy shortages, the incapability of Jones Act-compliant ships to provide relief to Puerto Rico is both apparent and worrisome. According to the Federal Reserve Bank of New York, shipping goods from the continental United States to Puerto Rico costs roughly two times as much as from a neighboring island—this is precisely the basis for Puerto Rico's commercial supply of LNG from Trinidad and Tobago, rather the United States. Furthermore, the limited capacity and cost-prohibitive nature of available vessels to ship supplies to



Puerto Rico mean that in the last 2 years, only 28 out of the 852 commercial shipments to Puerto Rico came from Jones Act vessels.

While Hurricane Fiona is not a natural disaster equal in proportion to Hurricane Maria, the damage brought about by Hurricane Fiona has created many of the same obstacles and challenges for Puerto Rico. Hurricane Fiona decimated the energy grid of Puerto Rico, taking the entire island's power offline. On Sept. 20, Luma Energy, one of two power companies responsible for all of Puerto Rico's energy grid, restored power for 100,000 Puerto Ricans, but worries persist surrounding the ability to quickly restore power to suffering citizens. Puerto Rico's recent history with hurricanes does not inspire confidence in the full re-establishment of its energy supply and infrastructure.

Decades of infrastructure management neglect and financial mismanagement by Puerto Rican officials led to slow power restoration following Hurricane Maria. In the interim period before full power restoration, the island relied heavily upon imports of fuel to power temporary generators across the island while infrastructure was rebuilt.

The key question is whether the United States should reform, alter, or waive the Jones Act to ensure expediency in delivering relief to Puerto Rico.

In this decades-long debate, two policy avenues become abundantly clear:

1. The Biden Administration should expeditiously pursue and grant an emergency temporary waiver to the Jones Act to reduce the barriers and costs for energy and humanitarian relief to the people of Puerto Rico.
2. Congress could advance legislation that creates a lasting carve-out under the Jones Act for the transportation of energy and humanitarian



relief to Puerto Rico, similar to the exemption granted to the U.S. Virgin Islands.

Providing more nimble and flexible support to Puerto Rico is a sensible step to offset predictable damage and disruption. The economic burden of shouldering the Jones Act adds an annual \$1.1 billion in increased costs, while subsequently depriving Puerto Rico of \$1.5 billion dollars in lost economic potential. A removal of this economic burden would grant Puerto Rico greater access to economic capital to create more opportunities for growth. Such a move would also empower greater ease of access to U.S. resources by allowing more ships to deliver products to Puerto Rico, which would underpin the development long-term resilient energy infrastructure. The justifications for these propositions are three-fold:

- The complete failure of Puerto Rico's energy grid in 2017, and now in 2022, demonstrates the value of currently providing an exemption for the island from the Jones Act to provide and safeguard a reliable source of energy for those whose lives depend upon it.
- Due to fiscal corruption, mismanagement, and poor government infrastructure planning, the economy of Puerto Rico is fragile and perhaps cannot withstand taking on additional cost-bearing burdens without the added risk of Puerto Rico defaulting on its debts and declaring bankruptcy, as it did even well before Hurricane Maria. Even with the inclusion of PROMESA, Puerto Rico still owes \$14.8 billion in debts owed to the Highways and Transportation Authority and the Electric Power Authority.
- The Biden Administration has a moral obligation to pursue an America First policy to protect the lives of all citizens to the best of their ability, ensuring that true energy freedom and security are available to all



Americans. The present circumstances in Puerto Rico provide the Biden Administration with a clear template for both providing emergency waivers and working towards establishing a lasting all-of-the-above-energy solution.

The Failure of Puerto Rico's Energy Grid

The collapse of Puerto Rico's energy grid is not a new phenomenon. Rather, grid failures serve as the rule rather than the exception in the event of natural disasters. Despite restoring power fully following Hurricane Maria's impact and spending billions of federal money, Puerto Rico had several blackouts in the years following 2017. The Jones Act further exacerbated the costs of energy as well. For example, the load demand for energy in Puerto Rico (a 27-1 consumption to production ratio), is only one-third of the average energy consumed in the continental United States. Despite consuming two-thirds of less energy, Puerto Ricans end up paying more than twice the cost for electricity (34 cents per kWh, compared to 14 cents per kWh in the continental U.S.) because of import restrictions caused that artificially limited supplies and increased the price of energy.

With Hurricane Maria's devastation wiping out more than 80% of Puerto Rico's previously dilapidated physical energy infrastructure, the damage of Fiona, or subsequent hurricanes, undoing significant portions of infrastructure that took five years of repair and rebuilding remains, adding to the threat to Puerto Rico's vulnerable energy grid. A temporary exemption for energy supplies under the Jones Act would go far in expediting all necessary energy equipment and resources. To this end, creating a streamlined policy of exempting vulnerable U.S. islands under the Jones Act, particularly in the event of natural disasters, will bolster a system predicated on preventative action, rather than reactionary responses. Additionally, such a policy would reduce



economic barriers prohibiting Puerto Ricans from accessing affordable, reliable, and clean energy.

The Economic Fragility of Puerto Rico's Economy

While natural disasters have negatively impacted Puerto Rico's economy, the territory had decades of fiscal mismanagement well before Hurricane Maria. As the commonwealth still grapples with the \$9 billion of debt that its central power company owns, the looming fear of bankruptcy remains overhead. In August 2015, the Puerto Rican government defaulted on its debt obligations. The commonwealth had only been able to place a payment of \$628,000 toward a \$58 million debt held by the Public Finance Corporation. The commonwealth would default again in December 2015, and May of 2016, plunging the Puerto Rican economy into a "death spiral" due to the egregious mismanagement and debt borrowing that plagued their economy. To date, the island territory still owes nearly \$14 billion even after its landmark debt restructuring plan. Therefore, in terms of domestic capital for investing in Puerto Rico's grid capacity and infrastructure repair, Puerto Rico is incapable of achieving energy stability and security absent significant restructuring.

Thus, the Biden Administration has significant economic grounds to advocate for a near-term emergency waiver of the Jones Act with special regard to the energy sector, as well as to pursue policies that establish lasting relief from unnecessary supply restrictions by prioritizing the security of supply and market-based supply optionality Puerto Rico. The future of Puerto Rico's energy viability depends upon a comprehensive refocusing on its energy industry. Puerto Rico has in recent years taken immense strides in creating an industry focused on building a resilient, affordable, and clean natural gas industry, but the necessary components to ensure this new sector's



survivability must come from the U.S. Thus, providing long-term reliable and affordable energy solutions to Puerto Rico must be a top priority.

The Moral Obligation of the Biden Administration to Choose America First

Previous administrations have waived the Jones Act. In the days following Hurricane Maria's impact, President Trump and Congress authorized a waiver of the Jones Act, temporarily removing Puerto Rico's constrained access to a global fleet capable of delivering U.S. resources and supplies. Essentially, the waiver removed restrictions on Puerto Rico to receive shipments from international vessels, as the commonwealth is prohibited from accepting imports from any non-U.S. vessel. This action allowed for the export of reliable and low-cost goods and most notably the transportation of LNG produced in the U.S. This was all the more critical given that the United States has no vessels to transport LNG in bulk under the requirements of the Jones Act.

Additionally, Jones Act waivers are bipartisan, they benefit the American people, and are backed by the historical precedent set by the last four presidents, President Biden included. In May of 2021, President Biden authorized a Jones Act waiver when the colonial pipeline was hacked, with President Biden stating "This is a whole-of-government response to get more fuel more quickly to where it is needed and to limit the pain being felt by American customers." Whether by an act of God (such as a hurricane) or an act of man (cyber-attacks that disrupt supply chains), the Biden Administration has a clear-cut precedent from both political parties in authorizing a Jones Act waiver in the event of any national emergencies.

In 2012, President Obama authorized a Jones Act waiver "As a result of impacts caused by Hurricane Sandy...to immediately allow additional oil tankers coming from the Gulf of Mexico to enter Northeastern ports, to provide



additional fuel resources to the region.” President Bush authorized a Jones Act waiver following Hurricane Katrina, “to ensure our Nation’s fuel markets remain well supplied.” The precedent exists, but the systemic nature of Puerto Rico’s energy infrastructure issues are dangerously apparent and have gone unaddressed for too long—much to the detriment of America’s most vulnerable communities—and should be addressed to ensure Americans are supported by policies that do not limit their access to essential resources enjoyed by their fellow Americans, namely energy affordability, reliability, and security.

Now, the Biden Administration is tasked with the same challenge, and the response should align with the actions of previous administrations. In 2022, the United States became the world’s largest LNG exporter. At the same time, Puerto Rico opened a new landmark LNG loading terminal in Peñuelas, increasing Puerto Rico’s annual distribution capacity of LNG substantially. The Biden Administration has the means and opportunity to provide Puerto Rico with energy, and Puerto Rico, now more than ever, can receive and distribute this energy.

The Path Forward

Given the clear precedent for authorizing waivers for natural disasters that affect America’s energy affordability, reliability, and security, the consensus for the Biden Administration should be abundantly clear. At a time when Puerto Rico is again suffering the devastating effects of natural disasters, and the lives and liberty of the island’s 3.2 million Americans hang in the balance, the Biden Administration must ensure Puerto Rico’s energy security, welfare, and prosperous future over the long run.



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