

Commonwealth of Puerto Rico  
Puerto Rico Energy Commission

COMISIÓN DE ENERGÍA DE PUERTO RICO	
Recibido por:	<i>[Signature]</i>
Fecha:	4/29/16 Hora: 2:35

IN RE:

INTEGRATED RESOURCE PLAN (IRP)  
FOR THE PUERTO RICO ELECTRIC  
POWER AUTHORITY

No.: CEPR-AP-2015-0002

SUBJECT: INTEGRATED RESOURCE PLAN  
FOR THE PUERTO RICO ELECTRIC POWER  
AUTHORITY ASSESSMENT PROCEEDING

**BRIEF OF THE CONSORTIUM MEMBERS**

**TO THE HONORABLE PUERTO RICO ENERGY COMMISSION:**

**COMES NOW**, York Capital Management Global Advisors, LLC and ITC Holdings Corp. (together, the “Consortium Members”) who appear before the Puerto Rico Energy Commission (the “Commission”) in the above-referenced matter as a consortium of companies known as *Puerto Rico New Electricity Partners*, pursuant to the Commission’s *Regulation on the Integrated Resource Plan for the Puerto Rico Electric Power Authority, Department of State Regulation No. 8594*, July 17, 2015 (“Regulation 8594”) and its *Resolution* of February 9, 2016. The Consortium Members, through their counsel, O’Neill & Borges LLC, respectfully submit this brief requesting that the Commission disapprove with the recommendations and requirements described herein the Integrated Resource Plan (“IRP”) submitted by the Puerto Rico Electric Power Authority’s (“PREPA”) in the above-referenced matter. The PREPA IRP (defined below) fails to comply with the public policy and legal requirements of Act No. 57 of May 27, 2014 (“Act 57-2014”), as amended by Act No. 4 of February 16, 2016, known as the *Electric Power Authority Revitalization Act* (“Act 4-2016”), and Regulation 8594.

As discussed more fully below, PREPA's lack of transparency, dilatory tactics and refusal to timely disclose critical information throughout this process not only prevented the Consortium Members from conducting a more thorough evaluation of the PREPA IRP and available resources but also deprives the Commission of a comprehensive record on which to base its decision. PREPA's IRP does not consider all reasonable resources and technologies available that could satisfy the demand for electric power services for the next 20 years, including alternative scenarios involving the modernization of the electrical infrastructure through the potential construction of new highly-efficient power generation plants by qualified private investors and independent power producers. Also, the IRP lacks a comprehensive stochastic analysis which would result in the consideration of different alternatives and scenarios not evaluated in the PREPA IRP. Accordingly, the Commission should order PREPA to revise and supplement the IRP to meet the Act 57-2014 requirements and Commission's standards as established in Regulation 8594.

## **I. INTRODUCTION**

In accordance with Section 2.9 of Act 57, which added a new Article 6C to Act No. 83 of May 2, 1941, as amended, known as the *Puerto Rico Electric Power Authority Enabling Act* ("Act 83-1941"),<sup>1</sup> PREPA is required to develop an IRP for a twenty (20) year planning period in accordance with the parameters and requirements established by the Commission.<sup>2</sup> Subtitle A, Article 1.3 of Act 57-2014, defines the IRP as "a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those

---

<sup>1</sup> Note that Act 4 - 2016 amended Act 83-1941 and renumbered Article 6C as a new Article 6B.

<sup>2</sup> See Statement of Motives, Act 57-2014 (2014 Puerto Rico Laws 302-304).

related to the offering of electric power, whether existing, traditional, and/or new resources, and those related to energy demand, such as energy conservation and efficiency or demand response and localized energy generation by the customer. Every integrated resource plan shall be subject to the rules established by the Commission and approved by the same. Every plan shall be devised with broad participation from citizens and other interested groups.” (Emphasis added.) As per Act 57-2014, through its evaluation of the IRP, the Commission should be able to guarantee the orderly and integrated development of the island’s electrical system.<sup>3</sup>

In particular, new Section 6C(h)(ii) expressly requires that PREPA include and consider the following in its IRP:

1. A range of future demand forecasts established by using methods that examine the effect of economic factors on electricity consumption as well as the effect of the use of lands under the Land Use Plan for Puerto Rico in effect, and the trend changes in the amount, type, and efficiency of electricity, and its end-use.
2. An evaluation of the conservation resources available in the market, including the management of electricity demand, as well as an evaluation of the programs in effect and the necessary programs to improve energy conservation.
3. An evaluation of the range of conventional and non-conventional generation technologies available in the market.
4. An evaluation of the transmission capacity and reliability of the system.

---

<sup>3</sup> See Article 2.9 of Act 57-2014 (2014 Puerto Rico Laws 367-368).

5. A comparative evaluation of the energy supply resources, including transmission and distribution.
6. An evaluation of the combination of resources designated to promote energy sources diversification; stabilize energy costs; and improve the reliability and stability of the electric power grid.
7. An evaluation of the existing electric power plants or facilities of PREPA that takes into account the improvements in the operational efficiency of plants, the useful life of existing plants, and the retirement date and decommissioning costs thereof, if applicable.
8. Evaluation of the environmental impacts of PREPA related to air emissions and water consumption, solid waste, and other environmental factors.
9. Evaluation of the interconnection of renewable energy projects and other independent power producers to the electric power grid, to comply with Act No. 82-2010.

The IRP must also include the “typical performance measurements of the electric power industry[.]”<sup>4</sup> These include, without limitation, revenue per kilowatt-hour (kWh), operating and maintenance expenses per kilowatt-hour, operating and maintenance expenses of the distribution system per customer, energy sustainability, emissions, total amount of energy used annually per capita, total amount of energy used annually per capita in urban areas, and total energy cost per capita.<sup>5</sup> Moreover, PREPA should conduct a comparative analysis of other electric power

---

<sup>4</sup> See Article 2.9 of Act 57-2014 (2014 Puerto Rico Laws 368).

<sup>5</sup> See *Id.*

companies similar to PREPA to show PREPA's performance in complying with the requirements of Act 57, particularly with respect to its effectiveness in complying with its electric power company duties.<sup>6</sup>

Following certain delays and several supplements to the IRP, PREPA filed an August 2015 Revised IRP, a March 2016 Supplemental IRP and an April 2016 Supplemental IRP (collectively, the "PREPA IRP"). The Commission must now review the record to determine whether to approve the PREPA IRP, disapprove it or disapprove it with recommendations and requirements.<sup>7</sup> In accordance with Act 57-2014's stated objective to generate broad citizen and interest groups' participation in the IRP proceedings, the Consortium Members have intervened in this proceeding with the goal of employing their collective expertise and constructive assessment and review of the PREPA IRP. The Consortium Members seek to contribute to the modernization of the electric infrastructure of Puerto Rico and have recognized Puerto Rico's urgent need to (i) diversify its energy generation options with cleaner and more efficient resources; (ii) comply with pressing environmental regulations; (iii) address the challenges concerning access to capital and attracting qualified investors which can undertake the needed modernization work; and, (iv) achieve the ultimate goal of providing clean and reliable energy to the citizens of Puerto Rico at competitive prices as promptly as possible.

## **II. RELEVANT FACTUAL BACKGROUND**

1. On May 27, 2014, the Governor of the Commonwealth of Puerto Rico signed into law Act 57-2014, whereby the Commission was created.

---

<sup>6</sup> See Id.

<sup>7</sup> See Section 3.04 (A) of Regulation 8594.

2. In addition to amending Act 83-1941, Act 57-2014 established important energy public policy principles for Puerto Rico and required PREPA to develop and adopt an IRP to be presented to the Commission for its evaluation and approval prior to July 1, 2015.<sup>8</sup>
3. In accordance with the requirements of Act 57-2014, on May 22, 2015, the Commission approved and enacted Regulation 8594 which adopted the rules for the presentation, evaluation and approval of the IRP.
4. On July 1, 2015, PREPA filed a *Request for Extension of Time to Submit the Integrated Resource Plan Due to Unpredictable Circumstances* requesting a ninety (90) day extension to submit its proposed IRP. At the time, PREPA claimed that, despite its best efforts, it was unable to complete the IRP since it was analyzing the then recent decision of the United States Supreme Court in Michigan et. al. v. Environmental Protection Agency et. al., 135 S.Ct. 2699 (2015), concerning the applicability of the United States Environmental Protection Agency's ("EPA") Mercury and Air Toxic Standards ("MATS") to the local electrical system.
5. On July 3, 2015, the Commission issued an Order denying PREPA's request for additional time and ordering PREPA to file the IRP on or before July 7, 2015, except those portions of the IRP which PREPA was allowed to file on July 15, 2015 pursuant to the June 26, 2015 Order of the Commission. However, due to the recent decision in Michigan, see, supra, the Commission requested PREPA to file an updated version of the IRP by August 17, 2015.
6. On July 7, 2015, PREPA presented its first draft of the IRP with the exception of Volume V, which was filed on July 10, 2015.

---

<sup>8</sup> See Article 6.23 (a) of Act 57-2014 (2014 Puerto Rico Laws 426-427).

7. On August 3, 2015, the Commission issued an Order to PREPA identifying certain deficiencies in the PREPA IRP and ordering PREPA to correct and address the same on its August 17, 2015 filing of a revised IRP.
8. On August 10, 2015, PREPA filed a motion with the Commission stating it would be able to submit the updated versions of Volumes I, III and IV of the IRP within the timeframe required by the Commission, but needed an additional sixty (60) days to submit the updated version of Volume V of the IRP.
9. On August 13, 2015, the Commission issued an Order granting PREPA until September 30, 2015 to file the updated version of Volume V of the IRP.
10. On August 17, 2015, PREPA filed the updated versions of Volumes I, III and IV of the PREPA IRP.
11. On September 30, 2015, PREPA filed its revised Volume V of the PREPA IRP.
12. On October 15, 2015, the Consortium Members filed a petition to intervene in the IRP proceedings before the Commission in accordance with Article III, Section 3.02 B of Regulation 8594 and the Commission's Policy Statement on Public Participation, Intervenor and Amici Curiae, Order No. CEPR-AP-2015-0002, (Puerto Rico Energy Commission, July 22, 2015).
13. On October 30, 2015, the Commission issued a form of Intervenor Non-Disclosure Agreement ("NDA"), requiring the signatories to ensure that all confidential information contained in the PREPA IRP would be stored securely and protected from disclosure. Per the Order of the Commission, each of the Intervenor and their advisors were required to execute the NDA prior to obtaining access to any confidential or protected information.

14. On November 16, 2015, the Commission issued an Order entitled Authorized Representatives, Discovery and Pleadings, clarifying the requirements that must be met by the authorized representatives of each of the parties, and also to grant an extension to conduct discovery.
15. On November 16, 2015, the Consortium Members submitted their *First Set of Interrogatories and Request for the Production of Documents and Information* (the “Consortium Discovery Requests”) to PREPA.
16. On November 24, 2015, the Consortium Members filed a *Motion in Compliance with Order*, submitting an amended list of authorized representatives for the assessment proceedings for the PREPA IRP.
17. On December 1, 2015, the Consortium Members filed the executed NDA with the Commission.
18. On December 4, 2015, the Commission issued an Order entitled *IRP Compliance and Intervenors’ Comments*, requesting that PREPA correct certain PREPA IRP deficiencies on or before March 4, 2016. Also, the Commission invited Intervenors to comment on several questions by December 17, 2015.
19. PREPA sent its response to the Consortium Discovery Requests on December 7, 2015. PREPA, however, failed to provide responsive answers to several interrogatories and requests for production of documents as required by Section 1.06 of Regulation No. 8594 and Article VIII of the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation No. 8543 of the Commission.



20. On December 17, 2015, the Consortium Members filed a *Motion in Compliance with Order*, by means of which they provided comments on seven questions posed by the Commission in the Order issued on December 4, 2015.
21. On December 22, 2015, a meeting was held between the Commission and PREPA, during which the Commission answered PREPA's questions and addressed all concerns it had regarding the December 4, 2015 Order.
22. On December 24, 2015, PREPA filed a *Motion to Reconsider* the December 4, 2015 Order on IRP Compliance and Intervenors' Comments, requesting that the Commission extend the March 4, 2016 deadline for seven months.
23. On January 5, 2016, the Consortium Members sent PREPA a letter objecting to several of its responses to the Consortium Discovery Requests.<sup>9</sup>
24. On January 15, 2016, the Commission issued a Resolution and Order, denying PREPA's requested seven-month extension for filing the required information requested on the December 4 Order. However, the Commission provided PREPA additional time to comply with the request made on the December 4 Order, based on the December 22, 2015 clarification meeting. As such, a final IRP proposal was required by March 28, 2016, and PREPA was required to provide the following additional information:
  - i. on or before February 5, 2016, a description of its input assumptions concerning distributed generation, renewable energy, and demand response; and
  - ii. on or before March 18, 2016, a description of its evaluation of transmission and storage in the Supplemental IRP.

---

<sup>9</sup> To date, PREPA has not responded to the Consortium Members' letter.

**BRIEF OF THE CONSORTIUM MEMBERS**

**Puerto Rico Energy Commission**

**No.: CEPR-AP-2015-0002**

**April 29th, 2016**

25. On January 27, 2016, the Commission issued a Resolution granting an extension of time to PREPA to file a memorandum of law discussing the legal basis for PREPA's request for classifying certain information provided to the Commission on January 12, 2016 as confidential.
26. On January 28, 2016, PREPA filed a *Motion to Reconsider* requesting that the Commission reconsider the schedule of compliance established in the December 4, 2015 Order, as modified by the January 15, 2016 Order.
27. On February 9, 2016, the Commission issued a Ruling and Order, denying PREPA's request for an extension of time filed on January 28, 2016. Nevertheless, the Commission modified the scheduled originally established through its January 15, 2016 Order.
28. On February 10, 2016, the Commission issued a Resolution entitled IRP Procedural Timeline, establishing the timeline and procedures for the IRP review and approval process.
29. On February 16, 2016, Act 57-2014 was amended in part by Act 4-2016, modifying certain provisions relating to the IRP, the request for proposals process and adoption of public-private partnership structures which may result from the approved IRP.
30. On March 9, 2016, the Commission issued a Technical Conference and Intervenors Order, requesting Intervenors to confirm on or before March 14, 2016, their participation in the Technical Conference.
31. On March 21, 2016, the Consortium Members filed a *Motion to Compel PREPA to supplement its responses to the Consortium Discovery Requests* (the "Motion to Compel"). The Consortium Members also notified the Commission of its intent to participate in the Technical Conference.

32. On March 28, 2016, PREPA filed its *Submittal of Supplemental IRP* in Response to the Commission's Order of December 4, 2015, as Modified by the Orders of January 15, 2016 and February 9, 2016, and requested an extension of four days to file the "sensitivities for the demand response and full RPS compliance, and the results for Future 2 scenarios."
33. On March 29, 2016, the Commission issued a Resolution, granting PREPA's request on March 28, 2016, and directing that the "sensitivities for the demand response and full RPS compliance, and the results for Future 2 scenarios" must be submitted on or before April 1, 2016.
34. On April 5, 2016, the Commission issued a Resolution and Order regarding PREPA's Confidential Claim (the "April 5 Order"), instructing PREPA to file a supplemental memorandum of law no later than April 15, 2016, answering specific questions regarding the designation of certain information to be provided by PREPA as confidential.
35. On April 5, 2016, the Commission published the Rules for the IRP Technical Conference.
36. On April 12, 2016, the Commission issued an Order entitled Portfolio Runs, ordering PREPA to run certain portfolios, as defined in the August 2015 Revised IRP and the March 2016 Supplemental IRP, with the PROMOD model, utilizing the revised fuel price forecast provided on March 21, 2016, on an expedited basis and to provide the results by April 19, 2016.
37. On April 20, 2016, PREPA submitted a *Supplemental Integrated Resource Plan* in response to the Commission's April 12, 2016 Order on Portfolio Runs including a partial submission of the data runs requested and requesting additional time to complete the remaining data runs.

38. On April 21, 2016, the Commission issued a Resolution and Order (the “April 21 Order”) addressing several motions to compel filed by Intervenors’, including the Motion to Compel, and pending resolution before the Commission. The April 21 Order also addressed PREPA’s confidentiality claims regarding access to “critical energy infrastructure information” (“CEII”) redacted from the IRP.
39. In particular, through the April 21 Order, the Commission granted access to the CEII to those Intervenors that had executed the NDA. However, per the April 21 Order, access to the CEII was limited in time and form as Intervenors were only granted visual access to the information at PREPA’s office during the two-day period commencing on April 25, 2016 and were not provided copies of any information that they could remove from the premises or allowed to copy the documents.
40. The April 21 Order also granted in part, the Consortium Members’ Motion to Compel and ordered PREPA to respond to all discovery requests that it had objected to claiming CEII. However, the April 21 Order did not grant the Consortium Members’ request for PREPA to produce all documents and information related to Siemens PROMOD generation dispatch cases. Instead, the Commission ordered PREPA to submit a memorandum in support of their argument that the PROMOD information requested by the Consortium Members, as well as other Intervenors, should be protected as a trade secret.
41. On April 26, 2016, PREPA submitted its memorandum arguing that the PROMOD’s should be protected as a trade secret because “it inherently possesses the potential to provide PREPA’s competitors / counter-parties a monetary profit at the expense of PREPA, and thus PREPA’s customers, and/or unfairly compete with other business, if disclosed.”

PREPA further alleged that, the Consortium Members, as well as a number of other Intervenors should be treated as competitors.

### **III. DISCUSSION**

#### **A. STANDARD OF LAW**

Pursuant to Regulation 8594, the Commission has three (3) alternatives when evaluating the IRP. The Commission may (i) approve the IRP, (ii) disapprove it or (iii) disapprove it with recommendations and requirements.<sup>10</sup> When considering the IRP, the Commission must make its determinations based on the following criteria:

1. Whether the IRP filing is complete and complies with all applicable laws and regulations;
2. Whether through the IRP process, PREPA faithfully and in a timely fashion reasonably explored and presented to the Commission and intervenors, the viable alternatives for meeting customer needs during the planning period, given the circumstances foreseeable at the time;
3. Whether the IRP fully complies with the requirements of Section 2.03, paragraphs [B][1] to [B] [3], of Regulation 8594, including but not limited to, the load forecast, system reliability assessment, and needs assessment;
4. Whether the IRP fully complies with the requirements of Section 2.03, paragraphs [B][4] to [B][10], of Regulation 8594, including but not limited to, the assessments of existing supply, demand, and transmission resources;
5. Whether the IRP fully complies with the requirements of Section 2.03, paragraphs [B][11] to [B][14], of Regulation 8594, including but not limited to, the planning environment assessment and assessments of new supply, customer, demand, and transmission resources;

---

<sup>10</sup> See, Section 3.04 (A) of Regulation 8594.

**BRIEF OF THE CONSORTIUM MEMBERS**

**Puerto Rico Energy Commission**

**No.: CEPR-AP-2015-0002**

**April 29th, 2016**

6. Whether the scenario and plan development and analyses contained within the IRP performed under Section 2.04, paragraphs [B][5] to [B][5], of Regulation 8594 meet the requirements of Section 2.04, paragraph [B] [7], of Regulation 8594;
7. Whether the Action Plan meets the requirements of Section 2.04, paragraph [B] [7], of Regulation 8594, and whether PREPA's Action Plan reflect the Preferred Resource Plan;
8. Whether the Energy Efficiency and Demand Response Plan and Report meets the requirements of Article IV of Regulation 8594;
9. Whether the Performance Metrics meet the requirements of Article V of Regulation 8594;
10. Whether the utility's IRP meets the reporting requirements of Section 2.04, paragraph [B] [6], of Regulation 8594;
11. Whether the IRP properly allows for reliance on the competitive bidding process to procure additional resources;
12. Whether the IRP is consistent with the statutory objectives for the sector with respect to energy efficiency, renewable sources of generation, and for the performance of fossil fuel generation; and
13. Whether the conclusions and recommendations in the IRP are in the public interest and beneficial to all customers.<sup>11</sup>

Regulation 8594 further provides that the Commission's order regarding the IRP must consider the comments of Intervenors and shall create a rebuttable presumption that the IRP "is reasonable and that the resources and actions contained in the Action Plan of the IRP are reasonable."<sup>12</sup> Finally, the Commissions' determination regarding the approval, disapproval or

---

<sup>11</sup> Section 3.04(A) of Regulation 8594 (emphasis added).

<sup>12</sup> See Section 3.04 (C) of Regulation 8594.

disapproval with recommendations and requirements of the PREPA IRP must consist of conclusions of law and findings of fact based on the evidence presented in the IRP proceedings.<sup>13</sup>

PREPA has failed to meet several of the aforementioned requirements. Consequently, the Commission should disapprove the PREPA IRP with recommendations and requirements discussed below.

## **B. DEFICIENCIES IN PREPA'S IRP**

### ***i. PREPA's lack of transparency and cooperation despite the existence of non-disclosure agreements precluded the full assessment and analysis of the IRP by the Intervenors.***

One of the key principles that Act 57-2014, aims to promote is more transparency in PREPA's processes and making citizen participation feasible.<sup>14</sup> In articulating such principles in Act 57-2014, the legislature acknowledged that PREPA has been a self-regulating monopoly whose governance lacks transparency and citizen participation.<sup>15</sup> To address this concern, Section 1.4 of Act 57-2014 established the principles of transparency and accountability that apply to PREPA, providing, in pertinent part, that PREPA's information "shall not be subject to confidentiality standards broader than those required." (Emphasis added.)

Despite the clear mandate of Act 57-2014, and the Commission's multiple efforts to encourage broad participation and transparency in the IRP proceeding, PREPA has not been fully or timely responsive to any of the discovery propounded upon it. As a result, both the Commission and the Intervenors lacked critical information necessary to constructively assess

---

<sup>13</sup> See, Section 3.04(D) of Regulation 8594.

<sup>14</sup> See, Statement of Motives, Act 57-2014 (2014 Puerto Rico Laws 302-304).

<sup>15</sup> Id.

the PREPA IRP until a few days ago, and, even when the information was finally made available, the form, substance, limited availability and timing of the disclosure prevented the Consortium Members from adequately assessing the information within the limited two-day time provided. As the Commission is aware, not only did PREPA refuse to provide certain information requested by the Commission and the Intervenors, it refused to do so relying entirely on unsubstantiated claims of confidentiality. PREPA's confidentiality claims must be balanced against the Legislature's mandate that confidentiality surrounding PREPA's information must not be broader than is absolutely necessary in order to ensure transparency and accountability in the IRP process. PREPA's refusal flies in the face of the Commission having established a detailed procedure for disclosure and handling of confidential information, including requiring execution of the NDA by the Intervenors and their advisors. Where reasonable security measures such as the use of NDAs exist, confidentiality concerns must be balanced with the need to disclose information that is critical to the IRP proceeding to those participants who have signed NDAs. Even laws protecting trade secrets and confidential information are not absolute. This was evident in the Commission's April 21 Order where, after months of disputes, the Commission ordered PREPA to allow the Intervenors that had executed NDAs access to CEII."

Notwithstanding, even after PREPA's disclosure of information, the limited access provided (in time and form) did not allow for any of the Intervenors to provide the Commission with a precise recommendation and assessment of the PREPA IRP's Action Plan. The constraints regarding the limited access to the information prevents Intervenors from adequately assessing the critical information and analyzing the CEII with the sufficiency needed to provide a fair evaluation of the PREPA IRP.



As noted by the Consortium Members in their Motion in Compliance with Order dated December 17, 2015, the Consortium Members' authorized representatives and technical consultants, as consultants to generation and transmission owners and operators throughout the United States, routinely access data that is considered CEII by other utilities and power generation providers. CEII is provided to support various types of system planning studies and is authorized by asset owner/operator(s) with non-disclosure and confidentiality agreements similar to the NDAs executed with PREPA and the Commission. In FERC Order 630, dated February 21, 2003 (Docket Nos. RM02-4-000, PL02-1-000) ("Order 630"), FERC provided new rules for access to CEII. Order 630 specifically provides that market consultants should have access to CEII in the development of new infrastructure. In particular, Order 630 provides that "[t]he procedures proposed in the NOPR (Notice of Proposed Rulemaking) were intended to provide access to CEII to requesters with legitimate need for the information. Generally speaking, market participants seeking to develop new or expanded energy resources would present such a need. Certainly, continued development of energy infrastructure is one aspect of the nation's defense against attacks upon that infrastructure." (Emphasis added.)

However, while PREPA provided access to the portions of the PREPA IRP that contained CEII in technical compliance with the Commission's April 21 Order, the extent of the access allowed failed to provide meaningful data when reviewed in light of the requirements of Order 630. The constraints under which PREPA provided access did not allow for a meaningful review of the PREPA IRP -- essentially merely illusory access was provided. PREPA allowed a visual inspection of certain unredacted reports and portions of the PREPA IRP and a visual review of the computer PSS/E transmission model files. To reiterate, PREPA did not allow copies of any

information to be removed from the premises or access to any information in formats that allowed for meaningful analysis. This visual access provided only limited information and fails to support the appropriate engineering and modeling analysis that is associated with new generation development in an electric system. To effectively support the modernization of the Puerto Rico electric system while minimizing the impacts to PREPA's customers, it is imperative that PREPA provide standard system data to developers such as the Consortium Members, as provided for in Order 630, in support of new generation alternatives. Access to this data is what ultimately will allow Intervenors and the Commission to adequately assess the PREPA IRP and provide constructive and productive analysis and recommendations to PREPA's Action Plan.

As such, the Consortium Members reiterate that, in order to fully evaluate and adequately advise the Commission, its technical consultants, as authorized representatives and signatories to the NDA, should have the same degree of access to the same universe of data as PREPA's consultants in the IRP process, who undoubtedly obtained the information pursuant to some form of non-disclosure agreement. A meaningful evaluation of the underlying information and, eventually, the PREPA IRP is the essence of the public policy expressed by Act 57-2014, which encourages public participation and transparency in the process to approve a 20-year IRP after PREPA and the Commission have considered thoroughly all available resources and are comfortable that the approved Action Plan provides the best future for Puerto Rico. Nevertheless, PREPA has declined to make the necessary data available to the Commission or the Intervenors. Hence, neither the Commission, the Consortium Members nor any of the

Intervenors are in position to properly evaluate the PREPA IRP or to determine that PREPA has adequately complied with all of the requirements of Section 3.04 of Regulation 8594.

Ultimately, it is in the Commission's interest, as well as the interest of all Intervenors and the general public, to receive the most informed evaluations of the PREPA IRP based on actual PREPA data. For this reason, the Commission should disapprove the PREPA IRP and order PREPA to comply with the requirements of Act 57-2014 and Regulation 8594 by providing Intervenors full access to the CEII, including the PROMOD data, and allowing them the opportunity to fully and adequately evaluate and consider the PREPA IRP and its proposals.

***ii. PREPA's failure to consider and evaluate all available resources renders the IRP incomplete.***

Act 57-2014 requires PREPA to consider in its IRP "all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those related to the offering of electric power, whether existing, traditional, and/or new resources and those related to energy demand, such as energy conservation and efficiency or demand response and localized energy generation by the customer."<sup>16</sup> However, the IRP fails to consider what seem to be other viable alternatives under the concept of "modernization" of the electrical infrastructure, such as partnering with qualified investors or independent power producers, or employing public private partnerships, to develop new generation. In fact, each of the scenarios contemplated by the PREPA IRP are limited in scope and purpose to those that allow PREPA to maintain exclusive control over its system, maintaining its self-regulating monopoly and lack of transparency and citizen participation.

---

<sup>16</sup> See, Article 2.1 (k) of Act 57-2014 (2014 Puerto Rico Laws 328).

In accordance with Act 57-2014, PREPA must address the energy and environmental challenges by, among other things, carrying out any process needed to make the electric power generated in Puerto Rico highly efficient and clean, through the use of co-generators and independent power producers.<sup>17</sup> Available resources also will be determined by the type of modernization required under Act 57-2014. The term “*modernization*” is defined in Act 57-2014 to include “projects for the development of new generation plants or the replacement of existing plants in accordance with the Integrated Resource Plan of the PREPA.” (Emphasis added.)<sup>18</sup> In fact, Act 57-2014, as amended by Act 4-2016, includes a provision prescribing the request for proposal process for the purchase of power and/or the modernization of electric power generation facilities.<sup>19</sup> Yet, despite the public policy articulated by Acts 57-2014 and 4-2016 to pursue modernization of the electric infrastructure, including the development of new power generation plants or replacement of existing generation, the PREPA IRP fails to contemplate in any of its scenarios or portfolios, such alternatives.

For example, the PREPA IRP does not adequately address a scenario in which the EcoEléctrica LNG terminal is expanded to its original design plan and the resulting natural gas supply is used to supply new combined cycle gas turbine assets in the south with renewables and new transmission built to integrate with existing PREPA infrastructure and provide reliable service to load centers in the North. During the Technical Conference, PREPA’s panel of witnesses responded to questions regarding the risk analysis performed as part of the PREPA IRP by stating that they started their analysis with a scenario where there was no generation in

---

<sup>17</sup> See, Section 2.6 of Act 57-2014, amending Section 6 of Act 83-1941.

<sup>18</sup> See Article 1.3(cc) of Act 57-2014 (2014 Puerto Rico Laws 323).

<sup>19</sup> See Section 11 of Act 4-2016, amending Section 2.9 of Act 57-2014, amending Section 6C of Act 83-1941.

the north side of Puerto Rico. However, the PREPA IRP does not include any evidence that this scenario was considered when selecting the best portfolio to serve customer load. In terms of looking at all available resources, options or solutions as required by Act 57-2014, the PREPA IRP does not consider alternatives such as power flow control solutions. As discussed during the Technical Conference by multiple Intervenors, these alternatives may offer viable solutions to address some of the violations that were very near the overload threshold (for example, less than five percent overload condition). At the very least, the PREPA IRP should consider these alternatives.

Furthermore, considering the existing and potential future gas supply from the EcoEléctrica LNG terminal, PREPA fails to consider as a viable Future and potential scenario, among others, alternatives that could immediately (and in the future) support new gas fired combined cycle generation in the area of Costa Sur along with transmission system improvements to support such new generation through private investment and/or qualified independent power producers or public private partnerships. In fact, the schedule for new generation resources for the Portfolio 3 Modified Future 1 Modified cases in the PREPA's IRP, fails to consider the immediate benefits of installing new high-efficiency combined cycle generation in the vicinity of the Costa Sur plant to replace the existing Costa Sur Units 5 and 6. Since natural gas is currently available at the Costa Sur site, there is no reason to delay installation of new high efficiency combined cycle generation to replace Costa Sur Units 5 and 6. Such installation could potentially save more than 30% in fuel costs, as compared to the continued use of Costa Sur Units 5&6 (total rated capacity of approximately 800 MW), as well as offer enhanced generation response to system disturbances, such as renewable generation

variability. Instead, the PREPA IRP suggests that both the high efficiency H class units are needed in combination to the steam units 5 and 6 over an extended 10 year installation schedule.

Furthermore, replacing the older generation units with new high efficiency generation units will have no material impact on the existing transmission system in the Costa Sur area, meaning PREPA's expressed concern that any increase of generation capacity in the Costa Sur or EcoEléctrica transmission area is contrary to PREPA's design principle. The Supplemental IRP contemplates reduced load demand, therefore, the assumed generation needs to be modified accordingly. Moreover, the use of private investors or public private partnerships for such installation would also expedite the installation of the new units and potentially reduce the stated installation schedule by 12 to 18 months (*i.e.* the stated installation schedule for new high-efficiency combined cycle generation at Costa Sur is stated in the Supplemental IRP to be approximately 5.5 years).

In addition, the Portfolio 3 Modified Future 1 Modified case assumes that the Aguirre Off-shore Gas Port will be operational by July 2017. Based on the information available on the permitting status of the Aguirre Off-shore Gas Port, this assumption appears outdated and unrealistic. In fact, it is very likely that the Aguirre Off-shore Gas Port is several years from operation and, it is not even clear as of today if it will ever operate. Also, Portfolio 3 Modified Future 2 Modified case (without the Aguirre Off-shore Gas Port) includes new high-efficiency H-Class combined cycle generation (single unit) at Costa Sur with commercial operation date of December 31, 2021, which assumes a development and construction schedule of five and a half years, starting in July 2016. However, development using an independent power producer or public private partnership could reduce this schedule by 12 to 18 months.

Under this scenario, the PREPA IRP also states that installing two high-efficiency H-Class combined cycle units by December 31, 2020 would be preferable, “however it is not feasible from a transmission point of view to have this generation in place together with Costa Sur units 5&6 and EcoEléctrica due to severe contingency overloads.” PREPA’s statement suggests that the existing Costa Sur units would continue operations after the new combined cycle units are placed in service, when, in fact, the existing Costa Sur units would be replaced by the new units. The PREPA IRP should provide further explanation or reevaluation on this point.

Moreover, the Consortium Members also note that, in PREPA’s Supplemental IRP filed on April 20, 2016 addressing the implementation of energy efficiency and demand-side management programs, the estimated future peak loads are significantly reduced over the study period through 2035 (*i.e.* a reduction of approximately 600 MW in year 2035 as compared to the Base IRP forecast filed by PREPA). These estimates reduce the need and costs for new generation in the North to a single, 70 MW combined cycle unit at Palo Seco or a similar size reciprocating internal combustion engines, instead of 210 MW of new capacity. The dynamics of this change illustrate the lack of appropriate development of sensitivity cases and supporting analyses (*i.e.* stochastic analysis of input parameters to enhance the accuracy of the IRP results) in the development of the initial alternatives for the PREPA IRP. This change also illustrates that there may be other considerations that would further reduce the need for new generation, such as higher penetration assumptions for renewable DG generation and utility scale renewable generation projects, which are currently aligned with the RPS standard of 20% in 2035.

In addition, PREPA’s Supplemental IRP filed on April 20, 2016 fails to sufficiently consider the availability of capital resources to finance the Action Plan and scenarios included in

the PREPA IRP. In fact, the PREPA IRP does not adequately analyze the projected energy rate increases which may be imposed to cover the debt restructuring/securitization transaction and how this may affect its Action Plan. Also, capital costs for improvements only assume renewable energy generation up to the required RPS standards. This does not take into account that the renewable energy generation industry will change and continue to evolve in the next 20 years and limiting PREPA's projections to the RPS standards appears too conservative, in particular when the PREPA IRP does not provide adequate justification to this approach. The PREPA IRP should discuss scenarios where additional renewable generation is considered.

The minimum run times included in the PREPA IRP are excessively high and indicative of an overly-conservative approach for a 20-year plan. A reasonable run time for PREPA's steam units should be about 168 hours or less. However, the PREPA IRP uses a model assumption of 720 hours. These run times appear excessively high and force PREPA to run less efficient units for longer periods of time. Again, this approach illustrates that the PREPA IRP is far from an adequate final product and has yet to complete the analytical levels required for a 20 year plan and for the approval of the IRP under Act 57-2014.

Because of their expertise in electric transmission facilities, the Consortium Members would have been able to provide extensive insight into PREPA's evaluation and assessment of the "transmission capacity and reliability of the system" and "evaluation of the combination of resources designated to promote energy sources diversification; stabilize energy costs; and improve the reliability and stability of the electric power grid."<sup>20</sup> These two issues are crucial to the approval of a final PREPA IRP as PREPA must provide an accurate assessment of the system

---

<sup>20</sup> See, Article 2.9 of Act 57-2014 (2014 Puerto Rico Laws 367-368).



to improve its performance in accordance with Act 57-2014. However, the PREPA IRP fails to provide information and analysis to substantiate PREPA's affirmation that it has considered all viable transmission options. In fact, when questioned by the Consortium Members on the subject during the Technical Conference, PREPA failed to substantiate its analysis by responding with conclusive statements that are not supported by PREPA's IRP.

In addition, even given the limited review allowed for the CEII, the Consortium Members identified that PREPA did not vary its assumptions even after filing the Supplemental IRP on April 20, 2016. In particular, PREPA did not vary its assumptions with respect to macro factors, such as Puerto Rico residents permanently leaving the island, fuel forecast changes, energy efficiency fluctuations or solar panel cost variances. These variable scenarios should be considered in the PREPA IRP. For example, if fuel prices increase substantially more than forecasted, the PREPA IRP should consider all other possible alternatives and scenarios. Contingency and risk analysis are critical to PREPA's development of the IRP and the Commission's final approval of the same. Completing this kind of analysis could lead PREPA to completely change existing assumptions and scenarios and influence the Action Plan proposed in the PREPA IRP. In sum, PREPA did not include a stochastic analysis that would render a more robust IRP -- an IRP that the Commission could approve without hesitation in accordance with the requirements of Act 57-2014 and Regulation 8594.

PREPA's failure to consider any of the alternatives set forth by the Consortium Members herein is striking given PREPA's fiscal and operational challenges, and its urgent need to comply with environmental regulations and reduce energy costs. As participants in the IRP proceeding, the Consortium Members intended to evaluate the information provided by PREPA and present

third party engineering analysis that gauge the cost and reliability impact of building new gas fired generation near the existing liquefied natural gas import infrastructure and using transmission to deliver electricity to the north. All stakeholders should have been able to test the aforementioned concerns with rigorous engineering analysis with the benefit of PREPA's system operating models. However, even after the issuance of the April 21 Order, PREPA's providing such constrained parameters for the access and ability to review the information, combined with what may be considered as an incomplete analysis of available alternatives that the Consortium Members believe are viable, have not allowed any of the Intervenors to properly access or analyze, or the Commission to be in a position to fully understand, the PREPA IRP or complete spectrum of alternate options for operating and generating electricity in Puerto Rico for the next 20 years, particularly given the known challenges faced by PREPA.

For these reasons, the Commission should direct PREPA to revise the PREPA IRP to consider future scenarios where the modernization of the electric infrastructure would include the construction and operation of new generation assets using private investment, qualified independent power producers or public private partnerships, as well as the scenarios set forth by the Consortium Members herein.

***iii. PREPA's narrow analysis of potential future scenarios and alternate resources should not limit the scope of any request for proposals issued pursuant to Act 57-2014 and 4-2016.***

As recognized by the legislature in its Statement of Motives for enacting Act 57-2014, "PREPA's vision is inaccurate and inconsistent with the purposes that prompted its creation... Such vision has, at times led to the proposal and adoption of measures that, in practical terms, adversely affected most of its customers." Act 57-2014, Statement of Motives. As stated above,

the PREPA IRP reflects PREPA's limited perspective on the possible solutions to its current challenges. PREPA's failure to appropriately allow access to CEII and the PROMOD data needed for Intervenors – including the Commission – to fully analyze the PREPA IRP or to provide alternative solutions, runs contrary to the legislature's stated motives and the disclosures allowed under Order 630. The limitations in Order 630 allowed PREPA to continue to restrict the pursuit of alternative solutions to Puerto Rico's energy and infrastructure needs and prevented an adequate analysis by the parties to this proceeding.

Pursuant to Act 4-2016, PREPA has been directed to adopt “joint regulations to be approved by the Commission and [PREPA]” for any bid process or request for proposals (“RFP”) for modernization of electric power generation plants by PREPA. Section 11(a)(iii) of Act 4-2016. Such joint regulations are to be approved within 90 days after the approval of Act 4-2016. *Id.* With the deadline for adoption of such joint regulations looming, the Consortium Members are concerned that PREPA will use the same approach to the PREPA IRP to restrict the RFP process. *If, on the other hand, the joint regulations allow bidders to submit proposals that are unhindered by PREPA's narrow view of potential solutions, the Commission will facilitate a process that more comprehensively addresses Puerto Rico's needs notwithstanding the deficiencies of the PREPA IRP.* In its Statement of Motives for the adoption of Act 4-2016, the legislature acknowledged that “[t]here is a compelling need to break the cycles of resistance to change for [PREPA] to be able to prosper and along with it Puerto Rico's economy.” Act 4-2016, Statement of Motives, paragraph B. For that reason, and as illustrated by its approach to the IRP, PREPA's vision should not guide the RFP process or the joint regulations that govern it. The Consortium Members urge the Commission to require PREPA to accept RFP regulations

that do not constrain proposals to the scenarios and futures set forth in the PREPA IRP. Also, the RFP regulations should incorporate specific guidance directing PREPA to provide system information and existing data that PREPA has most recently refused to provide. Such data is critical to support a meaningful and effective RFP process for new generation.

#### **IV. CONCLUSION**

**ACCORDINGLY**, York Capital Management Global Advisors, LLC and ITC Holdings Corp, as the Consortium Members, respectfully request this Honorable Commission to: (i) disapprove PREPA's IRP with recommendations and requirements as discussed above, as PREPA's IRP in current form fails to comply with the public policy and the legal requirements of Act 57-2014 and Regulation 8594; (ii) direct PREPA to revise the IRP to meet the Act 57-2014 requirements and Commission's standards as established in Regulation 8594; and (iii) direct PREPA to adopt joint RFP regulations not limited by the narrow scope of the PREPA IRP scenarios and futures.

#### **RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 29th day of April, 2016.

**I HEREBY CERTIFY** that on this same date, I sent electronic copies of this filing to:

acasellas@amgprlaw.com  
cfl@mcvpr.com  
dortiz@elpuente.us  
edwin.quinones@aae.pr.gov  
epo@amgprlaw.com  
hburgos@cabprlaw.com  
jperez@oipc.pr.gov  
lionel.orama@upr.edu  
mgrpcorp@gmail.com  
n-vazquez@aeepr.com  
valvarados@gmail.com  
n-ayala@aeepr.com

agraitfe@agraitlawpr.com  
carlos.reyes@ecoelectrica.com  
ccf@tcmrslaw.com  
codiot@oipc.pr.gov  
dperez@cabprlaw.com  
energiaverdepr@gmail.com  
felipelozada1949@gmail.com  
fviejo@amgprlaw.com  
icv@mcvpr.com  
lga@elpuente.us  
lmateo@ferraiuoli.com  
rstgo2@gmail.com

[victorluisgonzalez@yahoo.com](mailto:victorluisgonzalez@yahoo.com)

**I HEREBY CERTIFY** that on this same date, I mailed copies of this filing to:

**Windmar Group**

Attn.: Mr. Víctor González  
Calle San Francisco # 206  
San Juan, PR 00901

**Lcdo. Fernando Agrait**

701 Ave. Ponce de León  
Oficina 414, Edificio Centro de Seguros  
San Juan, PR 00907

**Roumain & Associates, PSC**

#1702 Avenida Ponce de León, 2ndo Piso  
San Juan, PR 00909

**Autoridad de Energía Eléctrica de Puerto Rico**

Attn.: Nélida Ayala and Nitza D. Vázquez Rodríguez  
Apartado 364267  
Correo General  
San Juan, PR 00936-4267

**EcoEléctrica, L.P.**

Carlos A. Reyes, P.E.  
Carretera 337 Km 3.7, Barrio Tallaboa Poniente  
Peñuelas, PR 00624

**Toro, Colón, Mullet, Rivera & Sifre, PSC**

Lcdo. Carlos Colón Franceschi  
PO Box 195383  
San Juan, PR 00919-5383

**José G. Maeso González**

Director Ejecutivo  
Oficina Estatal de Política Pública Energética  
PO Box 41314  
San Juan, PR 00940

**Felipe Lozada-Montañez**

Coordinador, Mesa de Diálogo Energético  
PMB 359  
425 Carr. 693, Suite 1

**BRIEF OF THE CONSORTIUM MEMBERS**

**Puerto Rico Energy Commission**

**No.: CEPR-AP-2015-0002**

**April 29th, 2016**

Dorado, PR 00646

**Enlace Latino de Acción Climática**

41 Calle Faragán

Urb. Chalets de Villa Andalucía

San Juan, PR 00926

**Lcda. Ruth Santiago**

Apartado 518

Salinas, PR 00751

**El Puente de Williamsburg, Inc.**

211 South 4th St.

Brooklyn, New York 11211

**Comité de Diálogo Ambiental, Inc.**

Urb. Las Mercedes

Calle 13 #71

Salinas, PR 00751

**Adsuar, Muñiz, Goyco, Seda & Pérez-Ochoa, P.S.C.**

Lcdo. Eric Pérez-Ochoa

PO Box 702924

San Juan, PR 00936

**Casellas, Alcover & Burgos, P.S.C.**

Lcdo. Heriberto Burgos/Lcda. Diana Pérez Seda

PO Box 364924

San Juan, PR 00936

**McConnell Valdés, LLC**

Lcdo. Carlos Fernández Lugo

PO Box 364225

San Juan, PR 00936

**Instituto Nacional de Energía y Sostenibilidad Isleña**

Lionel R. Orama Exclusa, D. Eng. P.E.

Jardín Botánico

1187 Flamboyán

San Juan, PR 00926

**Asociación Puertorriqueña de Energía Verde**

Alan M. Rivera Ruiz

Presidente

PO Box 50688

**BRIEF OF THE CONSORTIUM MEMBERS**  
**Puerto Rico Energy Commission**  
**No.: CEPR-AP-2015-0002**  
**April 29th, 2016**

Toa Baja, PR 00950-0688

**Ferraiuoli, LLC**  
Lcda. Lillian Mateo-Santos  
PO Box 195168  
San Juan, PR 00919-5168


**Oficina Independiente de Protección al Consumidor**  
Lcdo. José A. Pérez Vélez/Lcda. Coral Odier  
268 Ave. Ponce de León  
Hato Rey Center, Suite 524  
San Juan, PR 00918

**O'NEILL & BORGES LLC**

Attorneys for York Capital Management Global  
Advisors, LLC and ITC Holdings Corp., which  
appear herein as a consortium of companies known  
as the *Puerto Rico New Electricity Partners*

American International Plaza  
250 Muñoz Rivera Ave, Ste. 800  
San Juan, Puerto Rico 00918-1813  
Tel.: (787) 764-8181  
Fax: (787) 753-8944

Carlos A. Valldejuly Sastre  
PRSC No. 10193  
carlos.valldejuly@oneillborges.com

  
Ana Margarita Rodríguez Rivera  
PRSC No. 16195  
ana.rodriguez@oneillborges.com

  
Fermín E. Fontanes Gómez  
PRSC No. 18003  
fermin.fontanes@oneillborges.com