

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: REGULATIONS ON THE INTEGRATED RESOURCE PLAN CASE NO.: CEPR-MI-2018-0005

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SUBJECT: PREPA'S COMMENTS ON
PROPOSED REGULATIONS OF THE
INTEGRATED RESOURCE PLAN

**PREPA'S COMMENTS ON PROPOSED REGULATIONS
OF THE INTEGRATED RESOURCE PLAN**

The Puerto Rico Electric Power Authority ("PREPA") respectfully submits to the honorable Puerto Rico Energy Commission (the "Commission") PREPA's comments on the Commission's proposed "Regulations on the Integrated Resource Plan" ("Proposed IRP Reg."). The Proposed IRP Reg. was issued as an attachment to the Commission's February 8, 2018, Resolution ("Resolution") initiating this Docket. The Resolution provides for comments within 30 days of publication of the proposal.

I. INTRODUCTION

In general terms, PREPA believes it is useful for the Commission to set forth clear directives on what is expected to be delivered in PREPA's next integrated resource plan (IRP) filing, setting aside any current or future federal or Puerto Rico statutes, orders, or other developments that may affect this subject. Such directives may help avoid extra steps and costs such as were incurred in PREPA's first IRP proceeding (case no. CEPR-AP-2015-0002).

Accordingly, PREPA is submitting these comments on certain areas of the Proposed IRP Reg. The purposes of the comments essentially are to clarify certain areas, avoid unnecessary filings and motions, and avoid clear legal conflicts.

PREPA notes that the Resolution sets forth a high level summary of the background of PREPA's first IRP proceeding and the Proposed IRP Reg. PREPA does not understand the

Resolution to solicit comments on the summary. For completeness' sake, PREPA will make a few notes on the procedural history.¹

With respect to the legal aspect of the Resolution's summary, PREPA notes: (1) PREPA is a Debtor in the pending PROMESA Title III court case (Case No. 17-04780 (LTS)); (2) as the Commission is aware, under the federal PROMESA statute and Puerto Rico Act 2-2017, the Government of Puerto Rico and, in particular, the Fiscal Agency and Financial Advisory Authority ("AAFAF") currently are engaged in seeking certification of a Fiscal Plan for PREPA from the federal Financial Oversight and Management Board ("FOMB"); and (3) there has been public discussion by the Government of Puerto Rico, such as in the Governor's March 5, 2018, State of the State address, of possible changes in the structure of the Puerto Rico energy sector, any or all of which may affect the next IRP and/or the resource planning process. Although PREPA is providing comments relating to the Resolution and the proposed IRP guidelines pursuant to Section 2.2 of Act 38-2017 (the Uniform Administrative Procedure Act of the Government of Puerto Rico),

- to the extent the Resolution/proposed guidelines conflict with and/or are preempted by PROMESA and interfere with PREPA's ability to comply with PROMESA, such proposal is void and of no force and effect;

¹ With respect to the procedural history aspect of the Resolution's summary, PREPA will add the following brief notes: (1) the Modified IRP adopted by the Commission's September 26, 2016, Final Resolution and Order in the first IRP case, and amended and clarified by the Commission's further orders in that case, deferred certain issues, most notably what resource plans to approve relating to the Aguirre site and how much and what generation to build at Palo Seco; (2) the Aguirre site planning was addressed further in PREPA's first Rate Review (case no. CEPR-AP-2015-0001) and in the stayed Aguirre Site Economic Analysis case (case no. CEPR-AP-2017-0001); (3) per the Commission's orders, the Palo Seco generation planning was to be the subject of further discussion between PREPA and the Commission, but, for practical reasons, including the unresolved Aguirre site issues, that discussion has not moved forward; and (4) the Commission split off the subject of performance metrics into the stayed performance metrics case (case no. CEPR-IN-2016-0002).

- to the extent that the Resolution/proposed guidelines conflict with or are pre-empted by the exclusive authority of AAFAF to “collaborate in conjunction with the Governor of Puerto Rico and his representatives in the creation, execution, supervision, and oversight of any Fiscal Plan....” (Act 2-2017 § 5(b)), such proposal is void and of no force and effect;
- to the extent that any portion of the Resolution/proposed guidelines violates PROMESA, including 11 U.S.C. Sec. 362 as incorporated by PROMESA, such proposal is void and of no force and effect;
- the filing of these Comments does not constitute a waiver of any arguments regarding or an admission of the Commission’s authority, powers, jurisdiction, access, or oversight to any aspect of the fiscal plans, budgets, or any other obligation or right of PREPA, AAFAF, and/or the FOMB under PROMESA or Act 2-2017; and
- the filing of these Comments shall not compromise the rights of PREPA, AAFAF, and/or the FOMB to contest the legality and effective nature of the Resolution/proposed guidelines or the Commission’s claimed authority, powers, jurisdiction, access, or oversight in any forum, including in the pending litigation between PREC, PREPA, AAFAF, and the FOMB.

II. **COMMENTS ON CHAPTERS I AND II**

A. **Sections 1.02 and 1.03 on Legal Basis and Purpose and Executive Summary**

PREPA understands these Sections to set forth the Commission’s perspectives on these topics and, accordingly, PREPA is submitting only one clarifying comment.

Sections 1.02 and 1.03 do not explicitly refer to the subject of legal compliance in the next IRP, even though compliance with federal environmental law (most notably but not limited to the U.S. E.P.A.'s Mercury and Air Toxics Standards) and the Puerto Rico renewable portfolio standard targets (Act 82-2010 as amended) were major subjects in the first IRP proceeding and can be expected to be major subjects in the next IRP proceeding.

PREPA infers, however, that the discussion in Sections 1.02 and 1.03, is not meant to exclude considerations of legal compliance, and that when Section 1.03 refers to “reasonable resources”, that term may be understood to encompass legal compliance considerations.

PREPA suggests that the Commission may wish to confirm and clarify this point by adding language to Section 1.03 to that effect. *See also* the parallel comment below on Section 1.08(B), definition 20, Integrated Resource Plan or IRP.

B. Section 1.07 on Unforeseen Proceedings

Section 1.07 refers to hypothetical unforeseen proceedings being conducted in accordance with Act 57-2014 as amended.

PREPA suggests that the Commission should add that any such proceedings also must comply with any other applicable law, such as Act 38-2017, when applicable, for example.

C. Section 1.08(B) on Definitions

2. Advanced Meter: Is it the intention of the Commission that an “advanced meter” have literal last gasp power service notifications, or that alternative, more economical notifications of lack of service, should or may be used? In any event, the definition the Commission selects should be clear and precise in order to avoid confusion and disputes.

5. Cogeneration: Shall this definition be subject to federal PURPA statute qualifying rules?

17. Environmental Regulations: This definition refers to regulations but not statutes. The next IRP should take into account environmental statutes, such as the federal Clean Air Act, when applicable. PREPA suggests that the definition be amended by adding, at the end, “and applicable federal and Puerto Rico environmental statutes”.

20. Integrated Resource Plan or IRP: PREPA suggests that the term “reasonable resources” be clarified to make clear that it includes legal compliance, as discussed above with respect to Section 1.03.

21. Intervenor: PREPA would like to establish that, as was seen in the previous Rate Review and IRP proceeding, not all intervenors are the same, have the same interests, or have the same possible conflicts. The Commission should have the ability to distinguish, for example, commercial interest intervenors from public advocacy intervenors. A commercial intervenor, for example, a natural gas provider, could be granted an unfair competitive advantage given unfettered access to PREPA’s confidential and proprietary information, to the detriment of PREPA and its customers, versus a public advocacy group that has no such interests. This needs to be clearly defined from the beginning, to avoid, for example, problematic discovery requests. This also should be included in Section 3.03.

25. Microgrid: The definition is what would be considered for a private microgrid under the proposed Commission regulation (see case no. CEPR-MI-2018-0001, in which PREPA has filed concerns and comments), and should be established as such. The second sentence of the definition assumes a single goal for private microgrids, but they may have other purposes, such as resilience and service continuity for critical loads. The definition does not appear to contemplate that PREPA itself also may own or operate microgrids. PREPA microgrids also may have may have other goals. Accordingly, PREPA suggests that the goals sentence be

deleted or revised, and that the definition be revised or supplemented to provide for private as well as PREPA microgrids.

31. Power Purchase: PREPA notes that existing power purchase and operating agreements (“PPOAs”) that are unexpired and not rejected in the Title III case are not subject to Commission approval. PREPA suggests that the definition be revised to recognize that there may be legacy PPOAs that are not subject to Commission approval.

D. Section 1.13 on Mode of Submission

First, in order to reduce paper waste, an original and one paper copy of the IRP and any other component of the original IRP filing, instead of three paper copies, should suffice. The IRP will be a quite voluminous document.

Second, instead of a submission via a USB drive, PREPA suggests proceeding to a more modern and economical approach, by the Commission establishing a reliable cloud storage system (Dropbox or similar) for all electronic submissions.

E. Section 1.15 on Confidential Information

This Section should include an additional paragraph on critical energy infrastructure information (“CEII”) consistent with the many CEII determinations made by the Commission in the first IRP proceeding and, on occasion, in other proceedings. The paragraph should also provide for PREPA not having to refile the same legal arguments over and over regarding the law and principles on CEII, as it would be a waste of time and resources to prepare and refile the same arguments.

F. Section 2.02 on IRP Filing Structure and Requirements

Section 2.02(E)(3) in some instances may call for PREPA to provide the entirety of a document when that is or might be problematic under federal copyright law. PREPA will make its best reasonable efforts in providing a requested document, but PREPA cannot provide

information in violation of copyright law. PREPA will always provide the necessary reference, but the end user may need to purchase such document from the provider, if such document cannot be provided free of cost. The regulation should accommodate this concern.

As to Section 2.02(F)(1), PREPA will provide such information to the Commission, but information that is CEII, or confidential and proprietary commercial Information that if disclosed would place PREPA and its customers, or a PREPA vendor, in an economic disadvantage, will need to be stated as confidential, and should be treated as such without requiring PREPA to make burdensome and repetitive filings. The regulation should accommodate these concerns.

As to Section 2.02(F)(2), PREPA objects to any provision that violates copyright law and/or software licensing agreements. PREPA cannot provide copies of licensed software to third parties. PREPA can provide access to the current generated models, under supervision at PREPA's offices, but the consultants or intervenors need to be knowledgeable in order to be able to analyze these models. PREPA has very limited staff available to work these systems in normal times, and, as is well known, recruitment of specialized personnel by current law and conditions is practically impossible. Also, it is important that PREPA not be forced to provide commercial interest intervenors with information that places PREPA, and the people of Puerto Rico, at a commercial disadvantage by revealing sensitive operating data. The regulation should accommodate these concerns.

G. Section 2.03 on IRP Analyses and Reporting Requirements

- C) 1) a) ii) This level of detail by class may not be able to be estimated.
- C) 1) c) ii) The level of detail by class is not available.
- C) 1) e) ii) The 5% deviation, is in reference to what value? Forecasts encompass years of data.

- D) 1) b) Full information may not be available, because it would not be readily provided to PREPA for private resources.
- E) 1) a) This provision needs to establish / recognize that PREPA is an electrically isolated electrical system, with a relatively small size with limited system inertia, with the particulars of the existing generating units, which is essential to be considered before blindly using large grid standards to evaluate reserve margins.
- F) 3) b) PREPA can only provide information on initiatives of which it has direct knowledge and/or in which it is involved.
- F) 3) c) This statement is overly broad, and not possible.
- F) 3) e) How is the 2% derived? Is this an economical value? Could it be counterproductive, a “death spiral” value? What if demand is already substantially dropping, would a 2% additional decline be “overkill”? This figure should be reconsidered and/or the Commission should allow more flexibility in selecting a value.
- H) 2) a) Although PREPA will be using a Capacity Expansion Model to evaluate the Resource Plans, it may be necessary to run the final plans through, for example, a Security Constrained Economic Dispatch model to obtain the necessary details on costs, emissions, dispatch, transmission constraints, among others.
- J) 1) a) ii) As stated, this can be an extremely onerous and consuming task, one that may not be possible to complete for years. In addition, any one project can affect a series of other projects, and the combinations may not be possible to evaluate all at once. Renewable energy can be of different types, and each will affect the system differently. At the end, it is essential to state the motive (purpose) for such a requirement. This item

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is not feasible to be completed at such a system wide level, as stated. PREPA is open to a revised requirement that is feasible, if it would be useful and can be formulated.

- J) 1) a) iii) This needs to be established as CEII.²
- J) 1) a) iv) This needs to be established as CEII. Also, given current technology, this can be provided as an appropriate electronic file instead of paper.
- J) 1) b) See J) 1) a) ii)
- J) 1) d) vi) A. These files fall under CEII.
- J) 1) d) ix) See J) 1) a) ii)
- J) 1) d) x) See J) 1) a) ii)
- J) 1) d) xii) These files fall under CEII.
- J) 1) e) See J) 1) a) ii)
- J) 1) e) i. A. See J) 1) a) ii)
- J) 1) e) i. B. See J) 1) a) ii)
- J) 1) e) ii. See J) 1) a) ii)
- J) 2) b) This additional study would be CEII.
- J) 2) c) This additional study would be CEII.

H. Section 2.04(A) on Schedule and Filing

PREPA reads Section 2.04(A) such that it may mean that the next IRP is or may be due on September 26, 2019, rather than on July 1, 2018, as provided by the final order in the first IRP proceeding.

² Here any everywhere in these Comments that PREPA indicates material is CEII, PREPA intends that to be a request that the Proposed IRP Reg. recognize that fact and provide appropriate protection as was ordered in the first IRP proceeding, without PREPA having to engage in repetitive and unnecessary briefing.

The Commission should clarify this point, but, before doing so, PREPA, without waiving its legal concerns, suggests that PREPA and Commission staff discuss what would be a more suitable date than either of the above dates. The July 1, 2018, date is too soon for various practical reasons, but September 26, 2019, is too long a delay under the current legal structure.

One possibility would be to leave Section 2.04(A) as is, but, all else being equal, for PREPA and the Commission to agree on a new due date under Section 2.05(A).

I. Section 3.01 on IRP Prefiling Process

PREPA does not understand Section 3.01(A) to prohibit PREPA and the Commission's Staff or the Commission to engage in appropriate pre-filing informal communications to serve the objectives of the IRP process or other law.

PREPA urges the Commission to apply a rule of reason in considering possible application of Section 3.01(B). The statutes provide for IRP regulations, but ultimately they provide for PREPA preparing the IRP and then the Commission reviewing the IRP. An iterative process with what could amount to "moving targets" for PREPA likely would be very problematic, and it could cause delays, extra costs, and confusion, with added risks of data errors, inconsistencies, or mismatches.

J. Section 3.02(A) on Filing of the IRP

Section 3.02(A) should include a time limit for determination of whether a refiled IRP is compliant. In the first IRP case, the second deficiency finding was approximately three months after the filing of the refiled IRP. That is too long. The 30 days limit, at the most, also should apply to review of a refiled IRP for compliance.

K. Section 3.03 on Intervenors

See Comments on Section 1.08(B)(21).

L. Section 3.05 on Procedural Calendar

PREPA suggests that the regulation also should provide that the Commission will issue its final decision no later than six (6) months after filing, except in exceptional circumstances. PREPA believes that is a reasonable and practical duration. *See also* Act 38-2017, § 3.13(g) (“Any case submitted to an adjudicative proceeding before an agency shall be resolved within a term of six (6) months, from its filing, except in exceptional circumstances.”).

M. Section 3.06 on Prefiled Written Direct Testimony

First, given the technical nature of this proceeding, the Commission should consider the using of report submittals, instead of only testimony format documentation.

Second, if the Commission nonetheless requires testimony, then it should expressly provide that witnesses need not sign each page, unlike common practice in Puerto Rico. In the PREPA first Rate Review, PREPA’s having to follow the common practice mean that the official testimony in the initial filing had to be scanned and “OCR’d”, which was confusing and caused needless extra effort, cost, and delay for everyone.

N. Section 3.07

Section 3.07 needs to provide for exceptions for CEII and other confidential material. The final IRP possibly may include such material.

O. Additional Provisions

PREPA suggests that there should be a Section on discovery. The regulation should require all intervenor discovery to be reasonably calculated to elicit or identify relevant and admissible evidence that is sufficiently and fairly related to the IRP. The party requesting discovery holds the burden of proof to establish the relevance of such discovery request. The regulation also should provide for establishment of a reasonable discovery schedule. The regulation also should provide that PREPA may object to discovery that requires PREPA to

perform new studies, new computer runs, or significant new investigations, without limiting PREPA's ability to object on any other appropriate grounds support by applicable law and practice.

PREPA suggests that there should be a Section on the Commission's decision. The regulation should include a provision that the Commission will render a decision based on the applicable law and the evidence in the record, and will not be based on facts not in the evidentiary record. The regulation should not permit Staff reports to be submitted and relied upon by the Commission in its decision in the manner that occurred in the PREPA first Rate Review. Those Staff reports included new facts and new issues that were not properly presented and as to which PREPA did not have fair notice and an opportunity to be heard, nor a proper and fair opportunity for discovery, nor sufficient time to prepare cross-examination.

III. COMMENTS ON CHAPTER III

PREPA requests that this Chapter be assigned to a different party, which would be able to handle such a directive, and not be accused of any bias in running these programs, as PREPA almost certainly would experience. These programs, or the process of contracting out for these programs, be done by either the Energy Commission, or the Commonwealth Energy Public Policy Office ("CEPPO"), as is similar to the norm in many other regulated jurisdictions. PREPA's role would be to provide, given the necessary non-disclosure and confidentiality provisions, the information it possesses that is necessary to run such programs, and the collection of funds via an energy efficiency rider (tariff).

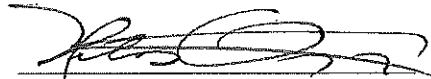


WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests its
Comments be accepted as such, and that such other relief as is appropriate be entered.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 12TH DAY OF MARCH, 2018

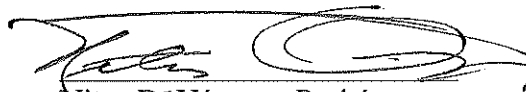
PUERTO RICO ELECTRIC POWER AUTHORITY



Nitza D. Vázquez Rodríguez
TSPR No. 9311
Executive Advisor
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4436; 787-521-4433
Email: n-vazquez@aepr.com

CERTIFICATION OF FILING AND SERVICE

I hereby certify that on March 12, 2018, I have sent the above filing to the Puerto Rico Energy Commission via comentarios@energia.pr.gov, secretaria@energia.pr.gov, and mcintron@energia.pr.gov, and to the office of its General Counsel via legal@energia.pr.gov, tnegron@energia.pr.gov, and afigueroa@energia.pr.gov.



Nitza D. Vázquez Rodríguez
TSPR No. 9311
Executive Advisor
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4436; 787-521-4433
Email: n-vazquez@aeepr.com