GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

IN RE: REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN	NO. CEPR-AP-2018-0001 **SUBJECT:** PREPA's Motion Regarding Initial Technical Hearing and Procedural Calendar

PREPA'S MOTION REGARDING INITIAL TECHNICAL HEARING AND PROCEDURAL CALENDAR

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") and respectfully submits to the honorable Puerto Rico Energy Bureau (the "Energy Bureau") PREPA's Motion Regarding Initial Technical Hearing and Procedural Calendar. The Motion is prompted by PREPA's desire for an efficient and orderly procedure, collaboration on scheduling, development of a sound and complete evidentiary record, and concerns about the Initial Technical Hearing structure as established by the Energy Bureau's Resolution of July 26, 2019, and the Procedural Calendar set by the Energy Bureau's Resolution and Order of July 3, 2019.

1. PREPA believes that it, the Energy Bureau, actual and potential intervenors, and other stakeholders, including the public in general, all plan and hope that this integrated resource plan ("IRP") case will be conducted in a manner that is consistent with applicable law (including but not limited to Acts 57-2014, 38-2017, and 17-2019, as amended).

2. PREPA also believes that it, the Energy Bureau, intervenors, and other stakeholders all share, or at least should share, the objectives that this IRP case should be conducted in an efficient and suitable manner so that there are proper opportunities for discovery by the Energy Bureau, its staff and consultants, intervenors, and PREPA; the timely presentation of intervenors' positions; and the proper "testing" of PREPA's and intervenors' positions through discovery and opposing testimony, all in order to achieve the best possible outcome for the people of Puerto Rico.

3. Even before the July 26, 2019, order, PREPA had indicated that it has concerns about the Procedural Calendar issued on July 3, 2019. More specifically, PREPA's July 5, 2019, "Interim Compliance Filing re July 2, 2019 Order, and Motion for Reconsideration on General or Interim Basis", on pages 3-4, footnote 1, noted that PREPA has two very significant concerns about the Procedural Calendar. In that footnote, PREPA stated:

> Before proceeding further, PREPA must note that it is deeply concerned by the procedural calendar. The calendar provides for no rebuttal testimony by PREPA, and for as little as only four business days in which PREPA can conduct discovery from intervenors after the intervenors file written testimony and before the evidentiary hearing starts. As a practical matter, that means no discovery. The calendar is severely out of sync with good utility regulation practice. In major utility matters, where the utility is the proponent, the norm is to give the utility the last word, including in written testimony. In addition, good utility regulation practice requires sufficient opportunities for the utility to conduct discovery regarding intervenor testimony. The procedural calendar does not afford either of those things. The point of those requirements is not just to be fair to the utility. The point also is to allow the development of a sound administrative record on which the administrative agency can make a decision. The calendar, as it stands, will present the Energy Bureau with a lopsided record that may require in a decision that is not in the interests of the people of Puerto Rico. PREPA intends to file a motion to amend the procedural calendar.

4. PREPA, until today, however, had not prepared and filed a motion relating to its concerns regarding the Procedural Calendar. Since July 5, 2019, PREPA, in this IRP case, has been focused largely on compliance with the Energy Bureau's directives and discovery, and on obtaining approval of the proposed contract with its independent IRP experts, Siemens PTI, so that PREPA can comply with the directives and discovery. As the Energy Bureau is aware, there have been a number of compliance filings, motions, orders, and Energy Bureau sets of discovery during this period. PREPA will not repeat here the "timeline" of all of those items. Also, as a secondary factor, PREPA had been awaiting the Energy Bureau's order regarding the Initial Technical Hearing.

5. On July 26, 2019, the Energy Bureau issued its Resolution regarding the structure of the Initial Technical Hearing, including adding a second day so that the Hearing covers not only August 13, 2019, as originally scheduled by the Procedural Calendar, but also August 14, 2019, and potentially even longer.

6. PREPA has carefully reviewed that July 26, 2019, order, identified some significant concerns regarding some aspects of that order as such and in relation to the Procedural Calendar, kept in mind PREPA's pre-existing concerns with the Calendar, and worked to develop possible solutions for consideration by the Energy Bureau. There is no one "perfect" schedule, but PREPA believes that some structural changes are essential even if the specifics of those changes may vary.

7. PREPA has identified the following significant concerns with some aspects of the structure of the Initial Technical Hearing as such as in the context of the Procedural Calendar.

a. PREPA is concerned that the Initial Technical Hearing, as currently structured by the July 26, 2019, order, permits questioning by intervenors without requiring any advance indication from intervenors of the questions, and without setting specific limits on the scope / subject matters of the intervenors' questions other than the general parameters of the subject matters assigned to different time slots of the Hearing, with the final time slot being held open for unspecified "other matters". Thus, under the current Initial Technical Hearing format, PREPA is concerned that PREPA and Siemens have no real ability to identify in advance what they will or might be asked by intervenors and, therefore, PREPA and Siemens have no real ability to prepare for those questions. As a result, the Initial Technical Hearing, with respect to intervenor questions, is likely to yield a process that, at least some of the time, will frustrate the Energy Bureau, its staff and consultants, and intervenors, because PREPA and Siemens likely will have difficulty answering at least some intervenor questions "on the spot". That situation, moreover, could contribute to a problematic evidentiary record, which would be a problem not just for PREPA but for everyone involved, including the Energy Bureau.

b. PREPA notes that the Energy Bureau might have intended a narrower scope for intervenor questions, but that is unclear at this time to PREPA. Regulation No. 9021, Section 3.04, provides for

"initial questions from ... Intervenors regarding the content of the IRP filing". However, the second paragraph of the July 26, 2019, order refers to "initial questions from ... intervenors" without including expressly the language that those initial questions are limited to the content of the IRP filing. Furthermore, Sections III and IV of the July 26, 2019, order indicate issues / subjects to be discussed without indicating that the intervenors' questions are limited to the content of the IRP filing. Thus, again, PREPA is concerned with the potentially expansive and unpredictable scope of intervenor questions under the order.

c. That concern is magnified even more by how the Initial Technical Hearing fits into the Procedural Calendar. The Procedural Calendar allows petitions to intervene to be filed through August 2, 2019, and the requirements for such a petition do not require a great deal of detail. See Regulation No. 9021, Section 3.03, referencing Regulation No. 8543, Section 5.05, and Act 38-2017, Sections 3.5 and 3.6. The petitions to intervene filed to date in this IRP case contain a very limited amount of information, much less than PREPA and Siemens would need in order to engage in meaningful preparation for intervenor questions at the Initial Technical Hearing. Moreover, the Procedural Calendar does not require intervenors to file written testimony until October 15, 2019. Thus, PREPA and Siemens will lack detailed information on intervenor positions until

two months after the Initial Technical Hearing. To be clear, the main point here is not to object to when the intervenor testimony is due. The point here is that, because the intervenor testimony is due two months after the Initial Technical Hearing, it is not available for PREPA and Siemens to use to prepare for the Initial Technical Hearing.

d. From PREPA's perspective, it is not clear that there is any sound reason that intervenors must or should be allowed to ask questions at the Initial Technical Hearing, even though that is provided for (as to the content of the IRP filing) by Reg. No. 9021, Section 3.04. Intervenors may issue discover to PREPA from the time their intervention is approved until October 1, 2019, under the Procedural Calendar. Given that intervenors may obtain written discovery answers from PREPA through a proper procedural process, there does not appear to be a sound benefit to allowing intervenor questions on no notice at the Hearing.

e. The Energy Bureau also should consider that PREPA and Siemens have limited time for preparation for the Initial Technical Hearing given the compliance filing and three sets of discovery responses due in August before the Hearing, before factoring in any new discovery that may be issued.

f. PREPA also has one separate practical concern about scheduling. PREPA understood from the July 3, 2019, order that there would be

an Initial Technical Hearing on August 13, 2019, with a format to be established by the Energy Bureau "at a later date". PREPA did not anticipate, however, that the Energy Bureau's ultimate order would add a second day, split different subjects between the two days, and, apparently, go beyond questions about the content of the IRP filing. Certain important individuals from PREPA and Siemens are not available on August 14, 2019. More specifically, Marcelo Sáenz (Siemens) will not be available for both August 13th and 14th, Peter Hubbard and Nelson Bacalao (both form Siemens) are not available on August 14th.

8. In addition, the Initial Technical Hearing as currently structured also highlights and even magnifies the asymmetrical, and therefore unfair and problematic, nature of certain aspects of the Procedural Calendar, i.e., the problems noted in PREPA's July 5, 2019, filing, quoted earlier in this Motion.

a. In contrast to intervenors, it appears that PREPA will have no opportunity to ask the intervenors discovery and can only ask them questions as cross-examination during the evidentiary hearing, scheduled to start on October 22, 2019. As noted earlier, the intervenors' testimony is not due until October 15, 2019. The Procedural Calendar does not provide for discovery by PREPA, but, even if it did, given that there are only four business days between the intervenor testimony and the first day of the evidentiary hearing, the reality is that PREPA has no opportunity for discovery.

b. Also, under the Procedural Calendar, PREPA is not afforded any opportunity to file rebuttal. Thus, an intervenor could offer a gravely flawed critique or proposal, but PREPA would not be able to rebut that position or proposal except through cross-examination and perhaps live rebuttal prepared in a matter of days with no discovery.

c. That structure potentially could lead to the Energy Bureau being faced with the situation of a deeply problematic intervenor position or proposal with only very limited opposing evidence. That would be bad for everyone, including the Energy Bureau, who would be forced to make a decision based on a flawed evidentiary record.

d. PREPA notes, moreover, that in any major utility regulatory proceeding where the utility bears the burden of proof, the norm in United States utility regulation is for the utility to be allowed to file the final round of written testimony or, at least, for the utility and intervenors simultaneously to file the final round of written testimony. That follows from basic legal principles about the burden and order of proof.

9. With respect to possible changes to the format of the Initial Technical Hearing, PREPA here offers several alternatives.

a. The Energy Bureau could not allow intervenor questions at the Initial Technical Hearing.

b. Or, the Energy Bureau could allow intervenors to propose questions in advance, and then the Energy Bureau could decide which ones to

(C)

ask. In a number of past technical conferences, the Energy Bureau did not allow intervenors / interested parties directly to ask questions to PREPA, but instead allowed them to propose in advance written questions that the Energy Bureau then reviewed and the Bureau then selected which items to ask PREPA. The timing of the steps of this process should be structured so as to give PREPA and Siemens time to prepare for the approved questions, if possible, but even the Energy Bureau acting as a gatekeeper, so to speak, would be helpful and would reduce (but not eliminate) the concerns with the current structure.

c. In any scenario where intervenors may ask or propose questions, the questions should be limited to questions regarding the content of the IRP filing, consistent with Reg. No. 9021, Section 3.04, and for the practical reasons discussed earlier.

d. Finally, with respect to the individuals from PREPA and Siemens who are not available on August 14, 2019, PREPA proposes the following:

    i. Discuss the following topics on August 13th

        1. PREPA's Presenation
        2. Minigrid Economics
        3. Natural Gas

    ii. Discuss the following topics on August 22st

        1. Resource Portfolio Results

2. Transmission Line Hardening

3. Limitations of Resources Options

4. Question on other matters

10. With respect to PREPA's concerns regarding the Procedural Calendar, PREPA proposes and requests that there should and must be (a) a real opportunity for PREPA to obtain discovery from intervenors after intervenors file their written testimony; and, (b) an opportunity for PREPA to file rebuttal after it has had sufficient time to review the intervenor testimony, to obtain discovery from intervenors, and to perform its own analyses as needed for rebuttal. There is no single "perfect" amount of time for those steps, but, at a minimum, PREPA should have at least 14 calendar days from when it receives intervenor discovery responses until PREPA must file its rebuttal. Depending on what intervenors propose, e.g., if a proposal effectively requires new Long-Term Capacity Expansion model runs, even 14 days could turn out to be much too short a period, so it should be the minimum.

WHEREFORE, the Puerto Rico Electric Power Authority respectfully requests that the Honorable Puerto Rico Energy Bureau grant this Motion, alter the structure of the Initial Technical Hearing, and amend the Procedural Calendar, consistent with this Motion, and enter any other relief as is warranted.

RESPECTFULLY SUBMITTED,

IN SAN JUAN, PUERTO RICO, THIS 1st DAY OF AUGUST, 2019

PUERTO RICO ELECTRIC POWER AUTHORITY

I hereby certify that on this day I have filed the above Motion with the Puerto Rico Energy Bureau in hard copy at the office of the Clerk of the Puerto Rico Energy Bureau; and, further that courtesy copies of the Motion were sent via email to the Puerto Rico Energy Bureau to secretaria@energia.pr.gov and wcordero@energia.pr.gov, and to the office of the Energy Bureau's internal legal counsel via email to legal@energia.pr.gov and sugarte@energia.pr.gov; and that copies of the Motion were sent to also to the Environmental Defense Fund via email to acarbo@edf.org..

Nitza D. Vázquez Rodríguez
TSPR No. 9311
Senior Attorney
Puerto Rico Electric Power Authority
P.O. Box 363928
San Juan, Puerto Rico 00936-3928
Tel. 787-521-4499