

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



**IN RE:** REQUEST FOR PROPOSAL FOR  
TEMPORARY EMERGENCY GENERATION

**CASE NO.:** NEPR-AP-2020-0001

**SUBJECT:** Request for Approval of Request  
for Proposals for Temporary Emergency  
Generation.

**RESOLUTION AND ORDER**

**I. Procedural Overview**

On January 6 and 7, 2020, Puerto Rico experienced major seismic events of magnitude 5.8 and 6.4<sup>1</sup> in the southern region, that resulted in considerable damages to public and private structures and infrastructure, as well as disruption of the electrical service throughout the island, including a general blackout ("Seismic Events"). These events caused physical damage to the electrical infrastructure including, but not limited to, the Puerto Rico Electric Power Authority ("PREPA") Costa Sur generation facility ("Costa Sur Facility") and EcoEléctrica, LLC generation facility ("EcoEléctrica Facility"). Since then, there have been over one hundred (100) earthquakes and aftershocks strong enough to cause additional damages.

On January 17, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order in Case No. NEPR-MI-2020-0003, ("January 17 Resolution") through which it initiated a process to obtain detailed information regarding the condition of PREPA's electrical infrastructure after the Seismic Events.<sup>2</sup> PREPA's Executive Director, along with its designated representatives, were summoned to appear at a technical conference at the Energy Bureau on January 21, 2020 to provide detailed information regarding the Seismic Events, with particular emphasis on the status of the Costa Sur Facility.<sup>3</sup>

The technical conference was held on January 30, 2020, in which an interdisciplinary group of PREPA's representatives briefed the Energy Bureau regarding the matters covered in the January 17 Resolution.<sup>4</sup> PREPA also submitted documents in compliance with the

<sup>1</sup> Magnitude reported in the Richter scale.

<sup>2</sup> See Resolución y Orden, Conferencia Técnica, Case No.: NEPR-MI-2020-0003, *In Re: Impacto de los Recientes Eventos Sísmicos en el Sistema Eléctrico de Puerto Rico*, January 17, 2020. ("January 17 Resolution").

<sup>3</sup> *Id.*



January 17 Resolution. Among others, PREPA submitted the following documents: (a) a report summarizing the progress of the stabilization of the electrical system in Puerto Rico after the Seismic Events, (b) information regarding the current and short term electric system generation capacity in light of the unavailability of the Costa Sur Facility, (c) a report summarizing the preliminary assessment of damages identified at the Costa Sur Facility<sup>5</sup>, (d) a summary of the financial impacts of the Seismic Events on PREPA<sup>6</sup>, and (e) copies of PREPA's relevant insurance policies covering the Costa Sur Facility.<sup>7</sup>

At the technical conference, PREPA's representatives argued that, given the uncertainty of the damages endured by the Costa Sur Facility and the likelihood that PREPA would not be able to provide the required base load generation during the peak demand season (i.e. June to September 2020), at least 500 MW of temporary emergency generation may be needed to compensate for the loss of generation at the Costa Sur Facility. PREPA's representatives also admitted that it started the initial steps to issue a request for proposals to obtain temporary emergency generation.

On February 6, 2020, the Energy Bureau held an executive meeting with PREPA's representatives to discuss alternatives to reduce the effects of the loss of the generation units at the Costa Sur Facility.<sup>8</sup> On February 12, 2020, PREPA submitted a document titled *Notification and Urgent Request for Approval of Request for Proposals for Temporary*

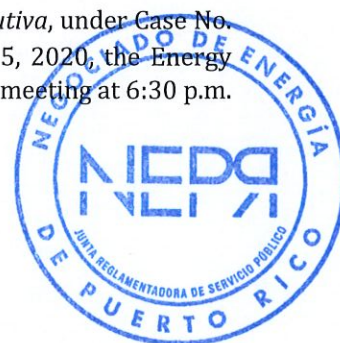
<sup>4</sup> On January 20, 2020, PREPA requested to reschedule the technical conference, alleging that additional coordination was needed for the appearance of PREPA's personnel. See *Urgente Solicitud de Posposición de Conferencia Técnica*. PREPA's legal counsel also appeared at the technical conference on January 21, 2020 and reproduced the written argument in support of the rescheduling of the conference. The Energy Bureau granted PREPA's request and rescheduled the technical conference for January 30, 2020.

<sup>5</sup> The report, dated January 2020, is identified as *Earthquake Damages at Costa Sur (Inspection Summary)*. On January 2, 2020, PREPA filed a document titled *Memorando de Derecho sobre Confidencialidad de Documentos*, requesting confidential treatment regarding this report, which is still pending resolution by the Energy Bureau.

<sup>6</sup> The report, dated January 2020, is identified as *Finacial Impact after M6.4 Earthquake on January 7, 2020 (Overview for the Puerto Rico Energy Bureau)*. Initially PREPA requested confidential treatment regarding this report, however, during the technical conference held on January 30, 2020, PREPA withdrew the petition for confidential treatment.

<sup>7</sup> See *Moción en Cumplimiento con Orden Dictada en Sala el Pasado 30 de enero de 2020*, dated February 14, 2020.

<sup>8</sup> On February 3, 2020, PREPA filed a document titled *Moción para Solicitar Reunión Ejecutiva*, under Case No. NEPR-MI-2020-0003, through which it requested an executive meeting. On February 5, 2020, the Energy Bureau issued Resolution under the same case, through which it scheduled the executive meeting at 6:30 p.m. on February 6, 2020.





*Emergency Generation* ("February 12 Filing").<sup>9</sup> The February 12 Filing included the following documents: (a) *Request for Proposals Temporary Emergency Generation February 12, 2020 Confidential Draft* ("Proposed RFP"), which includes a proposed draft of a *Lease and Operating Agreement* ("Proposed Dual-Fuel Units LOA")<sup>10</sup>; (b) *Business Case Assessment, Temporary Emergency Generation Capacity* ("Business Case Assessment") and; (c) *Guía para Procesos de Adquisiciones de Bienes y Servicios a través de Solicitud de Propuestas (RFP)*. PREPA also requested the Energy Bureau to treat the Proposed RFP and its attachments as confidential documents.<sup>11</sup>

On February 25, 2020, PREPA submitted a document titled: (a) *Supplement to Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation* ("February 25 Filing"). The February 25 Filing included the following documents: (a) Exhibit A: *Lease and Operating Agreement*<sup>12</sup>; (b) Exhibit B: *Load Forecast vs Generation Availability, Generation Availability/Outage Schedule, Updated 24 Sep 2020*; (c) Exhibit C: *Load Forecast vs Generation Availability, Generation Availability without Costa Sur, January to December 2020* (the "Forecast") and (d) Exhibit D: *Puerto Rico Power Authority Generation Directorate Costa Sur Recovery Project Rev. 2/21/2020* ("Generation Directorate Report"). On February 25, 2020, PREPA also submitted a document titled: *Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Supplement to Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation*.

Through the Proposed RFP PREPA intends to acquire capacity and energy to replace the loss of 820 MW of the Costa Sur Facility base load **until the facility is repaired, replaced**

<sup>9</sup> In support of its request, PREPA filed the following documents: (1) Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation; (2) Notification and Urgent Request for Approval of Request for Proposal for Temporary Emergency Generation; (3) Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation identified with a red stamp "This version includes confidential information" and; (4) Notification and Urgent Request for Approval of Request for Proposal for Temporary Emergency Generation, identified with a red stamp "This version includes confidential information".

<sup>10</sup> Specifically, the document is titled: *Lease and Operating Agreement relating to the emergency installation, lease and operation of dual-fuel fired, dispatchable power generation technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program*. PREPA proposes to use this contract for the process of acquiring temporary emergency generation through dual-fuel fired units.

<sup>11</sup> See *Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation*, February 12, 2020.

<sup>12</sup> Specifically, the document is titled: *Lease and Operating Agreement relating to the emergency installation, lease and operation of [renewable energy] generation and battery energy storage technology, located at [•], Puerto Rico as part of PREPA's Temporary Generation Program* ("Proposed Renewable Energy Units LOA"). PREPA proposes to use this contract for the process of acquiring temporary emergency generation through renewable energy sources and battery energy storage technology.





**or other alternate solutions are adopted to deal with the Costa Sur Facility's current condition.** According to PREPA, preliminary assessments indicate that the repair of the Costa Sur Facility, if feasible, would take no less than twelve (12) months.<sup>13</sup> PREPA argues that the temporary emergency generation would provide additional generation capacity to cover such period, but more significant, it would provide temporary generation capacity for the upcoming peak load season which starts on or about June 2020.<sup>14</sup>

The purpose of the Proposed RFP is to search for an entity, or multiple entities, that can enter into a lease, installation, operation and maintenance agreement (or agreements) with PREPA for dispatchable generation capacity of a total aggregate of up to 500 MW, for an initial period of twelve (12) months, with one potential extensions of six (6) months.<sup>15</sup> The required generation shall be installed at various locations identified by PREPA in the Proposed RFP. The Proposed RFP also contemplates PREPA's potential purchase of the generation assets.<sup>16</sup>

The February 12 Filing and the February 25 Filing encompasses PREPA's arguments in support of the approval of the Proposed RFP. For the reasons discussed below, and subject to the **conditions**<sup>17</sup> set forth herein, the Energy Bureau **APPROVES** the Proposed RFP. The Energy Bureau also **GRANTS** PREPA's request for confidential designation and treatment with regard to: (a) the Proposed RFP and its attachments and (b) Exhibits A and D of the February 25 Filing.

<sup>13</sup> See Proposed RFP at p. 5.

<sup>14</sup> *Id.*

<sup>15</sup> The Proposed RFP mentions in several instances that the LOA is expected to be for an initial term of twelve (12) months, with one (1) potential extension of six (6) months. See Proposed RFP (*Contract Term*) at p. 8. However, the Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA state that the initial term of the agreement will be six (6) months with two (2) potential extensions of six (6) months each. See Section 3.01 (*Agreement Term*) of the Proposed Dual-Fuel Units LOA at pg. 11 and Section 3.01 (*Agreement Term*) of the Proposed Renewable Energy Units LOA at pg. 10. In the updated RFP and LOA, PREPA shall clarify this discrepancy.

<sup>16</sup> In general, the terms and conditions of the potential acquisition of the generation assets is discussed in Section 15 (Option to Purchase) of the Proposed Dual-Fuel Units LOA and in Section 14 (Option to Purchase) of the Proposed Renewable Energy Units LOA.

<sup>17</sup> As discussed in more detail below, the Energy Bureau does not authorize PREPA to purchase any generation asset as part of the Proposed RFP. The Proposed RFP addresses an emergency situation for which PREPA intends to implement a temporary solution. Any permanent solution or commitment regarding generation assets due to the still unassessed condition of the Costa Sur Facility must be dealt with in a separate process. Consequently, PREPA is solely authorized to secure a lease agreement (or multiple lease agreements) for the installation, operation and maintenance of dispatchable generation capacity up to a total aggregate amount of 500 MW for a period of time not to exceed eighteen (18) months.





## II. Discussion and Analysis

### A. The Need for Temporary Emergency Generation

PREPA argues that the loss of the Costa Sur Facility's 820MW generation capacity due to the Seismic Events caused the following: (a) immediate shortage of reserve capacity; (b) conditions that threaten lives, public health and safety; (c) possible significant damage to public or private property; (d) shortage of operating capacity to serve the peak demand months (starting on June 2020); (e) shortage of primary and secondary system frequency regulation; (f) extensive use of less efficient and less flexible generation units that operate using higher-cost fuels, that result in higher operating costs; (g) reduced power system inertia, and dynamic and transient stability margins; and (h) alteration of PREPA's generation fleet maintenance schedules.<sup>18</sup>

PREPA also asserts that the estimated time to repair the Costa Sur Facility is approximately twelve (12) months.<sup>19</sup> According to PREPA, the damage assessments are still underway since damages are significant and this is the first event of this magnitude affecting a large power plant in PREPA's fleet.<sup>20</sup> PREPA further asserts that a full inspection has not been completed due to the continuing earthquake/aftershocks affecting the facility. According to PREPA, some experts have preliminarily indicated the Costa Sur Facility may not be viable for use due to safety concerns.<sup>21</sup> During the technical conference held on January 30, 2020, PREPA represented to the Energy Bureau that the final assessment on Costa Sur's damages would be completed not later than **April 1, 2020**.

In light of the above, PREPA petitions the Energy Bureau to review and approve the Proposed RFP, pursuant to the provisions of Act 57-2014<sup>22</sup> and Regulation 8815<sup>23</sup>. PREPA also requested confidential treatment of certain documents submitted with the identified motions and provided a memorandum of law stating its legal arguments to support its request.<sup>24</sup> PREPA argues that the information in the attachments includes

<sup>18</sup> See Proposed RFP at p. 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>23</sup> *Joint Regulation for the Procurement Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*, September 1, 2016.

<sup>24</sup> See Note 11, *supra*.





information considered "trade secret" information under Act 80-2011<sup>25</sup>. PREPA also argues that the draft Request for Proposal for Temporary Emergency Generation, including its Exhibits, is part of the administrative competitive procurement process under Regulation 8815 and shall be maintained confidential since such process has not concluded. PREPA further argues, that certain documents included as part of the February 25 Filing constitute Critical Energy Infrastructure Information ("CEII") that shall be designated and treated as confidential, pursuant to the Critical Infrastructures Protection Act of 2001, 42 U.S.C. § 5195c ("CIPA") and the Federal Energy Regulatory Commission ("FERC") Order No. 683, "Critical Energy Infrastructure Information", as amended, 18 C.F.R. § 388.113 ("Order No. 683").<sup>26</sup>

*B. Legal Framework Applicable to the Evaluation of the Proposed RFP*

As expressed above, PREPA seeks the review and approval of the Proposed RFP in accordance with Regulation 8815. However, PREPA emphasized the need for the Energy Bureau to act expeditiously due to the emergency caused by the Seismic Events.

Pursuant to Act 57-2014, the Energy Bureau has the power to adopt regulations governing the processes for the purchase of energy from other electric service companies and/or modernize electric generation facilities.<sup>27</sup> On September 1, 2016, the Energy Bureau and PREPA adopted Regulation 8815. The purpose of Regulation 8815 is to establish a procurement, evaluation, selection, negotiation and award process for contracting with third parties for the purchase of energy and for the procurement, evaluation, selection, negotiation and award process for the modernization and upgrade of PREPA's generation fleet and other PREPA resources. These processes shall be consistent and transparent, such that they encourage and support a climate of private sector innovation and investment in Puerto Rico to address PREPA's specific power generation needs.<sup>28</sup>

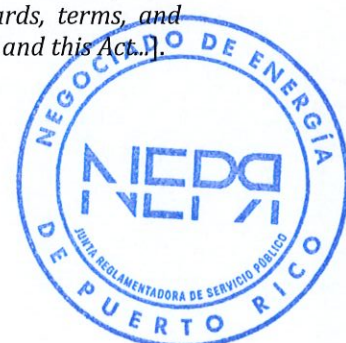
Regulation 8815 requires that, before the issuance of an RFP, PREPA notifies in writing to the Energy Bureau the recommendation regarding the proposed project, including all related documents that explain the project and a detail narrative regarding how the

<sup>25</sup> See Act 80 of June 3, 2011, as amended, known as *Industrial and Trade Secret Protection Act of Puerto Rico* ("Act 80-2011").

<sup>26</sup> See *Memorandum of Law Requesting Confidential Treatment for Certain Exhibits Attached to the Supplement to Notification and Urgent Request for Approval of Request for Proposals for Temporary Emergency Generation*, filed by PREPA on February 25, 2020 in the instant case.

<sup>27</sup> See Article 6.3(c) of Act 57-2014 [the Energy Bureau shall have the following powers and duties: ... (c) [e]stablish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of the rates of Puerto Rico's electrical system, and establish the guidelines, standards, practices, and processes to be followed to purchase power, modernize power plants or electric power generation facilities; provided, that every power purchase agreement shall meet the standards, terms, and conditions established by PREB in accordance with the provisions of the Energy Public Policy Act and this Act.].

<sup>28</sup> See Article 1.2 of Regulation No. 8815.





proposed project and the terms of the contract, as described in the proposed RFP, complies with the Integrated Resource Plan ("IRP"). The Energy Bureau must request any additional information it deems necessary, within ten (10) days from receiving the notification. Upon receipt of such additional information the Energy Bureau has forty-five (45) days to approve, reject or propose modifications to the proposed project.<sup>29</sup> If the Energy Bureau does not act within the specified term, the proposed RFP and its parameters shall be deemed approved.

Under Article 7.1 of Regulation 8815, upon completion of the negotiation of a contract, the Project Committee shall prepare a report, which shall include: (i) the reasons for signing the Contract, the reasons for selecting the chosen proponent; (ii) a description of the procedure followed, including comparisons between the chosen proponent and other proposals presented; (iii) an explanation of how the pricing terms included in the contract comply with the parameters established in the RFP, as approved by the Energy Bureau, and all other information pertinent to the RFP procedure and the evaluation conducted.<sup>30</sup>

Once PREPA's Board of Directors approves a contract, PREPA must submit the foregoing report and the proposed contract evaluation to the Energy Bureau, with the required profitability and pricing information analysis. The Energy Bureau must review the contract's terms and conditions to ensure compliance with those approved under the RFP and the contract form included as part of the RFP. The Energy Bureau shall complete its review within thirty (30) days from the date of the receipt of any additional information timely requested by the Energy Bureau or the submittal date of the contract and the report, as applicable. The Energy Bureau may approve or reject the proposed contract.<sup>31</sup> Note that once approved by the Energy Bureau, and before its execution, the terms and conditions of an approved contract or project cannot be modified without prior approval from the Energy Bureau.<sup>32</sup>

Section 6.32 of Act 57-2014, as amended by Act 17-2019,<sup>33</sup> provides for the evaluation and approval of all agreements between electric power service companies, including independent power producers, prior to the execution thereof. Paragraph (d) of Section 6.32 provides that in evaluating every proposal for an agreement between electric power service companies, the Energy Bureau shall take into account the provisions of the

<sup>29</sup> *Id.* at Article 4.2.

<sup>30</sup> *Id.* at Article 7.1(a). This report shall detail the evaluation by the Project Committee of each of the steps in the competitive solicitation process, including bidder qualification, bid evaluation, and selection of a final shortlist, as well as, its assessment regarding whether the process was conducted fairly and transparently.

<sup>31</sup> *Id.* at Article 7.1(d).

<sup>32</sup> *Id.* at Article 7.2(c). It is important to note that, Regulation 8815 is intended to provide flexible procedures and, accordingly, it shall be interpreted liberally so as to effectuate that intent and its purposes. *Id.* at Article 10.3.

<sup>33</sup> *The Puerto Rico Energy Public Policy Act* ("Act 17-2019").





IRP. The Energy Bureau shall not approve an agreement that is inconsistent with the IRP, particularly in all that pertains to renewable energy, distributed generation, conservation and efficiency goals established in the integrated resource plan as well as in the Energy Public Policy.<sup>34</sup> In addition, Paragraph (e) of Section 6.32 provides a timeframe for the review and evaluation of PREPA's agreements.

As noted before, the Energy Bureau has the power to establish and implement by regulation the public policy rules regarding electric power service companies, as well as any transaction, action or omission in connection with the electric power grid and the electric power infrastructure of Puerto Rico. The Energy Bureau shall implement such public policy rules, consistently with the Energy Public Policy.<sup>35</sup> Moreover, the Energy Bureau has the power to establish and implement regulations and **the necessary regulatory actions** to establish the guidelines, standards, practices, and processes pertaining to purchase power agreements, as well as to modernizing power plants or electric power generation facilities.<sup>36</sup>

Although Regulation 8815 doesn't contain all provisions of Article 6.32 of Act 57-2014, as amended by Act 17-2019, Regulation 8815 is aligned with the referenced Article 6.32 regarding the requirement that the proposed RFP must be consistent with PREPA's IRP. Moreover, Regulation 8815 provides an expedited and thorough evaluation process for both, the proposed RFP and the negotiated contract resulting from the selection process, that is also aligned with Article 6.32 and the general energy public policy promulgated by Act 17-2019.

PREPA is currently facing an emergency in the aftermath of the Seismic Events. There is uncertainty regarding the Costa Sur Facility, an important generation asset that represents 820 MW of installed capacity and about twenty five percent (25%) of the electricity generated in Puerto Rico. If we don't take any action today, this emergency will be exacerbated during the peak demand season that is expected to commence at the end of May/beginning of June. At that time, PREPA expects a base load generation deficiency of over 800 MW if the Costa Sur Facility is not available and no action is taken.<sup>37</sup>

Under these circumstances, and based on the fact that Regulation 8815 is aligned with Article 6.32 of Act 57-2014 regarding the proposed RFP being consistent with PREPA's IRP and the expedited evaluation process, the Energy Bureau **DETERMINES** that the process established in Regulation 8815 is appropriate to evaluate the Proposed RFP and the final LOA. Therefore, the Energy Bureau will evaluate Proposed RFP and the final LOA in

<sup>34</sup> See in general, Section 1.5 of Act 17-2019, where the general statements of "Energy Public Policy 2050" of Puerto Rico are enunciated.

<sup>35</sup> See Article 6.3(b) of Act 57-2014, *supra*.

<sup>36</sup> See Article 6.3(c) of Act 57-2014, *supra*.

<sup>37</sup> See February 25 Filing, Exhibit C.





substantial compliance with Regulation 8815 as well as the Energy Public Policy established by Act 17-2019.

*C. Proposed RFP Consistency with the Integrated Resources Plan*

PREPA is pursuing temporary generation at different sites to respond to the emergency in the aftermath of the Seismic Events. According to PREPA, the temporary generation is needed to address conditions that threaten lives, public health and safety. Through the RFP process, PREPA seeks temporary generation from qualified firms for the different sites via LOAs. As part of the proceedings in Case No.: NEPR-MI-2020-0003, PREPA expressed to the Energy Bureau that the Seismic Events resulted in major impact to PREPA's generation fleet and operations, especially the Costa Sur Facility.

According to the Proposed RFP, PREPA intends to award a contract for **temporary emergency generation**. If approved, the contract will be awarded to the qualified firm whose proposal is most advantageous to PREPA, considering price among other factors. Through the RFP, PREPA seeks to enter into a lease, installation, operation and maintenance agreement with PREPA for dispatchable generation capacity. It is intended to replace most of the 820 MW lost at the Costa Sur Facility until it can be repaired, replaced or alternate solutions have been secured. PREPA expects to award the contract for an initial period of twelve (12) months with PREPA's option to extend the contract for one additional period of six (6) months, subject to the availability of funds and required authorizations.

On September 23, 2016, the Energy Bureau approved PREPA's first IRP.<sup>38</sup> The first IRP became enforceable on March 13, 2017 and is considered the approved IRP.<sup>39</sup> Due to the effects Hurricanes Irma and María had on the electric power system, on March 14, 2018 the Energy Bureau determined that a revision of PREPA's Approved IRP was warranted.<sup>40</sup> Therefore, the Energy Bureau initiated a proceeding to review PREPA's Approved IRP.<sup>41</sup> As part of the current IRP review process, on June 7, 2019, PREPA filed before the Energy Bureau a new proposed IRP ("PREPA's Proposed IRP").<sup>42</sup> Since the proposed IRP evaluation

<sup>38</sup> See *Final Resolution and Order on the First Integrated Resources Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, notified September 26, 2016.

<sup>39</sup> See *Resolution on the Verified Motion for Reconsideration of Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, dated February 10, 2017 and; *Resolution*, Case No. CEPR-AP-2015-0002, dated February 10, 2017 (the aforementioned resolutions and orders collectively referred to as "PREPA's Approved IRP").

<sup>40</sup> See *Resolution and Order on Commencement of Review Proceeding and Order Establishing Initial Submission Timeline, In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, March 14, 2018, p. 2.

<sup>41</sup> *Id.*, pp. 3 - 4.

<sup>42</sup> See PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, Case No. CEPR-AP-2018-0001, June 7, 2019.





process is in the final stages, the Energy Bureau has not issued a final order or resolution regarding PREPA's Proposed IRP.

An IRP takes into consideration all reasonable resources needed to supply demand over the planning horizon, which in our case is twenty (20) years. Therefore, the use of temporary emergency generation due to unexpected or emergency situations is not normally considered a resource planning action in an IRP. PREPA's Approved IRP is no different.

Due to its temporary nature, actions that may result from unexpected situations or emergencies, such as the one contemplated by PREPA in the Proposed RFP, are not specifically identified as a resource planning action during the evaluation of an IRP. The purpose of the IRP is to identify **the permanent resources** needed to supply demand over the planning horizon, at least cost. All permanent resources are assumed to be available to provide service. If one of these assets is lost due to an prolonged emergency situation, the effect this loss can have on the system could be detrimental to the point of compromising service reliability. As such, under certain circumstances, the acquisition or development of **a temporary resource** to supply a need that arises as the result of an emergency not contemplated in the IRP analysis, could be considered as not inconsistent with such IRP.

For example, the **temporary acquisition** of a generation asset to make up for the temporary loss of a **permanent asset** due to *force majeure*, could be consider one of such circumstances. In these circumstances, the analysis regarding consistency should include, at least, (1) if the permanent asset is part of the identified resources on the IRP (including the expected retirement date), (2) the effect the loss of the asset has on the system, (3) the length of time the temporary asset would be in service (i.e. the temporary nature of such asset), and (4) the purpose of the acquisition of the temporary asset is to temporary replace, in total or in part, the permanent asset.

The Costa Sur Facility is one of the resources identified in PREPA's Approved IRP.<sup>43</sup> Moreover, in the Proposed IRP, the Costa Sur Facility continues to run until at least 2021.<sup>44</sup> Therefore, the Costa Sur Facility is identified, both, in PREPA's Approved IRP and the Proposed IRP, as a generation asset expected to provide service until at least 2021.

As we expressed before, the Costa Sur Facility is an important generation asset that represents 820 MW of installed capacity and about twenty five percent (25%) of the electricity generated in Puerto Rico. According to PREPA, if no action is taken to replace such asset, there will be a base load generation deficiency of over 800 MW during the peak

<sup>43</sup> See *Final Resolution and Order on the First Integrated Resources Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, notified September 26, 2016.

<sup>44</sup> See PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, Case No. CEPR-AP-2018-0001, June 7, 2019. See also, The Puerto Rico Electric Power Authority's Response to the Puerto Rico Energy Bureau's Tenth Requirement of Information, Case No. CEPR-AP-2018-0001, p. 12, January 22, 2020.





demand season, expected to commence at the end of May/beginning of June of this year. Based on this, we conclude that the loss of the Costa Sur Facility could have a negative impact on the electric system, an impact that could reduce energy availability and have a detrimental effect on service reliability.

Finally, the proposed contract term is twelve (12) months, with a six (6) months extension, at PREPA's discretion. Such term is considered temporary in nature. Moreover, the purpose of the Proposed RFP is to not to acquire a permanent asset, but rather to install a temporary one to supply part of the generation deficiency the loss of the Costa Sur Facility represents.

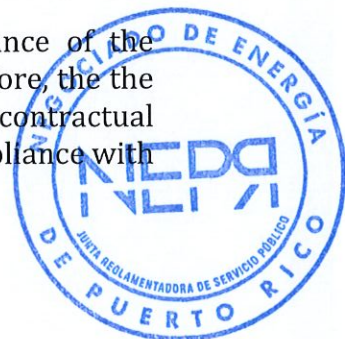
Both PREPA's Approved IRP and the Proposed IRP identify the Costa Sur Facility as part of the generation fleet until at least 2021. The purpose of the Proposed RFP is to acquire a **temporary asset to temporarily replace the Costa Sur Facility**, a facility that was temporarily lost due to a *force majeure* event. Therefore, under these circumstances, the Energy Bureau **DETERMINES** that the Proposed RFP is not inconsistent with PREPA's Approved IRP and the Proposed IRP.

Notwithstanding the foregoing, since the Proposed RFP addresses **an emergency situation** for which PREPA intends to implement a **temporary** solution, any permanent commitment shall remain outside the scope of the Proposed RFP. Specifically, there is no justification, at this time, to allow PREPA, to acquire, purchase or otherwise receive by transfer the generation assets contemplated in the Proposed RFP. Any permanent solution or commitment regarding generation assets due to the -still unassessed- condition of the Costa Sur Facility must be dealt with in a separate process.

Consequently, the Energy Bureau **AUTHORIZES** PREPA to issue an RFP to **only** secure a **lease agreement (or multiple lease agreements)** for the installation, operation and maintenance of dispatchable generation capacity up to a total aggregate amount of 500 MW, for a period of time not to exceed eighteen (18) months. That is, the Energy Bureau **DOES NOT AUTHORIZE** PREPA to issue an RFP which includes the acquisition, purchase or receipt by transfer of any generation asset.

For all of the above, considering the Energy Bureau's obligation to ensure the sound implementation of public policy regarding power service in Puerto Rico and acting in a proactive manner to protect the consumer's rights to receive a reliable service at a just and reasonable price, the Energy Bureau **APPROVES** the Proposed RFP, **subject to the conditions and limitations established herein**. It is important to note that, today's decision considers the special and unusual circumstances surrounding the Proposed RFP process, such as the conditions of PREPA's physical infrastructure, in particular that of the Costa Sur Facility.

The Energy Bureau's review and approval is limited to the compliance of the Proposed RFP with Act 57-2014, Regulation 8815 and no other matters. Therefore, the the Energy Bureau's review does not cover a legal review of the required contractual documentation or the contracting process, including without limitation: (i) compliance with





contracting requirements under other applicable laws, rules, and regulations, both federal and local and (ii) compliance with other applicable laws, rules, and regulations governing procurement activities, both federal and local.

*D. Confidentiality under Act 57-2014, Regulation 8815 and Regulation 8543*

Act 57-2014 establishes several proceedings to protect information that is deemed privileged or confidential. It allows any person who is required to submit information to the Energy Bureau that believes that such information is privileged or in need of confidential protection, to request the Energy Bureau such treatment. Under the provisions of Act 57-2014, the Energy Bureau shall afford protection to privileged or confidential information after an evaluation of such information.<sup>45</sup>

To that effect, Section 1.15 of Regulation 8543<sup>46</sup> allows a person that must submit information to the Energy Bureau to request the protection of the information that is privileged or confidential. Moreover, Article 10.2 of Regulation 8815 establishes that during an RFP process, proprietary and trade secret information will be protected from disclosure, except as required by law or court order.<sup>47</sup>

It is important to note that, during an RFP evaluation process, the communications between the Energy Bureau and PREPA shall be maintained confidential while the administrative competitive procurement process is ongoing.<sup>48</sup> Moreover, a *Proponent* (participant in a request for proposals process), as defined in Regulation 8815, may request the confidential treatment for all or a portion of the information submitted as part of an RFP. PREPA's *Project Committee*<sup>49</sup> has the discretion to grant such confidential treatment.<sup>50</sup>

<sup>45</sup> See Act 57-2014, Article 6.15.

<sup>46</sup> *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, December 18, 2014.

<sup>47</sup> See Regulation 8815, Article 10.2.

<sup>48</sup> See Article 4.2, Regulation 8815; (“[t]hese communications shall be maintained confidential while the administrative competitive procurement process is ongoing”).

<sup>49</sup> The *Project Committee* is defined in Regulation 8815 as:

*the committee designated in accordance with Section 3.1 of [Regulation 8815] that shall receive and evaluate qualifications and/or Proposals received in the RFQ and/or the RFP process, negotiate with the highest ranking Proponent or Proponents in accordance with [Regulation 8815], as determined by the Project Committee in accordance with [Regulation 8815], and make recommendation for the selection, negotiation, approval and signing of a Contract.*

Neither the members of the Energy Bureau nor their employees are part of the *Project Committee*.

<sup>50</sup> See Article 4.6 of Regulation 8815.





Furthermore, PREPA may also request the Energy Bureau to grant confidential protection to information that is privileged or confidential, and that belongs to PREPA or to a Proponent. For example, information protected as privileged or confidential includes, but is not limited to, costs and profitability information.<sup>51</sup> It is well established that the protection of confidential or privileged information remains a duty of both PREPA and the Energy Bureau.

Although some of the information designated as confidential under an ongoing RFP process may be disclosed once the contract is executed, some information, particularly the one that has been granted a protection for being privileged, proprietary or trade secrets, must remain as such.<sup>52</sup> The confidential protection under those circumstances survives the conclusion of the RFP proceeding. Particularly, information that has been regarded as proprietary or privileged must remain as such and it is PREPA's obligation to maintain it as confidential since the right to protect the privileged information belongs to the Proponent.<sup>53</sup>

After the conclusion of an RFP process, PREPA shall determine whether or not information and materials provided by a Proponent are confidential, according to Article 10.2 of Regulation 8815. Therefore, as established in both the legislation and the regulations applicable to the privileged or confidential information that is submitted to the Energy Bureau, both the Energy Bureau and PREPA have the obligation to preserve the confidentiality and privilege. Thus, it is not under the sole discretion of the Energy Bureau to withdraw the protection granted to a privileged or confidential information when previously has been demonstrated that the information deserves such protection.

As explained before, PREPA requested the Energy Bureau to classify and protect as confidential and privileged certain RFP documents based upon Act 80-2011, Article 6.15 of Act 57-2014, and Regulation 8543. Since the current proceeding is a review of an RFP under Regulation 8815, those protections granted to confidential or privileged information under Regulation 8815 are also applicable.

Upon examining PREPA's arguments, the Energy Bureau **GRANTS** confidential designation and reaffirms the protection granted to the privileged and confidential information submitted by PREPA as part of the RFP evaluation process.<sup>54</sup>

<sup>51</sup> See Article 7.1(d), Regulation 8815.

<sup>52</sup> See Article 10.2 of Regulation 8815.

<sup>53</sup> See Article 10.2 of Regulation 8815.

<sup>54</sup> PREPA seeks to obtain confidential designation and treatment of the Generation Directorate Report pursuant to CIPA and FERC's Order No. 683. As noted, since the current proceeding is a review of an RFP under Regulation 8815, those protections granted to confidential or privileged information under Regulation 8815 are also applicable to the General Directorate Report. Therefore, at this time it is not necessary that we address the issue of the applicability of CIPA and FERC's Order 683.





### III. Conclusion

For all of the above, the Energy Bureau **APPROVES** the Proposed RFP, subject to PREPA's compliance with the following conditions:

1. PREPA shall remove from the Proposed RFP (as well as from the Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA) all references to the right of PREPA to acquire, purchase or otherwise receive by transfer any temporary generation unit and/or its associated facilities. For the avoidance of doubt, we reiterate that as part of the conditional approval herein granted to the Proposed RFP, PREPA **is not** authorized to acquire any source of electric generation for permanent use as part of the Puerto Rico's electric grid. PREPA is solely authorized to execute a lease agreement (or multiple lease agreements) for the installation, operation and maintenance of dispatchable generation capacity up to a total aggregate amount of 500 MW, for a period of time not to exceed eighteen (18) months.
2. PREPA shall clarify in the Proposed RFP, the Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA the term of the agreement and any renewal. The term shall be identical in all documents and shall not exceed in the aggregate eighteen (18) months.
3. The Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA shall be modified to provide for the termination of the agreement before the expiration of the initial term or any renewal term -without further responsibility for PREPA- if the generation provided under the LOA is no longer required or beneficial for PREPA due to the availability of new or existing PREPA's generation sources, including, but not limited to, the Costa Sur Facility.
4. Any re-solicitation of proposals shall be under the same terms and conditions of the Proposed RFP herein approved. Should PREPA intend to modify the terms and conditions of Proposed RFP as part of a re-solicitation of proposals it must first seek review and approval from the Energy Bureau.
5. Any Addendum to the Proposed RFP that modifies the scope of the actions proposed by PREPA or the parameters subject to the approval of the Energy Bureau, shall be subject to approval by the Energy Bureau prior to the issuance of the Addendum.
6. Before executing any LOA, but not later than April 1, 2020<sup>55</sup>, PREPA shall provide to the Energy Bureau the final report assessing the damages of the Costa Sur Facility.

<sup>55</sup> According to PREPA's representatives during the technical conference held on January 30, 2020, this determination would be completed within sixty (60) days from the date of the hearing.





7. Before executing any LOA, but not later than April 1, 2020, PREPA shall provide to the Energy Bureau a detailed plan describing the proposed actions to be taken regarding the Costa Sur Facility, including, but not limited to, plans to repair or replace the Costa Sur Facility as well as any other alternate solution proposed by PREPA to substitute Costa Sur Facility base load generation.<sup>56</sup>
8. Should PREPA, based on justified grounds, is unable to comply with Condition #6 and Condition #7 established above, the initial term of any LOA, pursuant to the Proposed RFP, shall not exceed three (3) months, with a maximum of five (5) renewal terms not exceeding three (3) months each, provided, however, that each renewal shall be conditioned to the Energy Bureau's prior approval.
9. Beginning on March 31, 2020, PREPA shall submit to the Energy Bureau, on a monthly basis, a Progress and Status Report on PREPA's response to the damages to the Costa Sur Facility.
10. Before executing any LOA, PREPA shall provide to the Energy Bureau an updated Business Case Assessment, taking into consideration the results of the final report assessing the Costa Sur Facility damages as well as the proposed plan to be taken regarding the Costa Sur Facility.
11. Five (5) days prior to the publication of the RFP, PREPA shall submit to the Energy Bureau an updated version of the Proposed RFP (including the Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA), covering the modifications ordered herein.
12. Upon completion of the negotiation of the LOA, PREPA shall submit to the Energy Bureau the report required under Article 7 of Regulation 8815 together with a copy of the Proposed Dual-Fuel Units LOA and the Proposed Renewable Energy Units LOA for the Energy Bureau's final review and approval. The report shall include, without limitation, an estimated analysis of the potential range of profit margins of the selected proponent compared to industry benchmarks.

The Energy Bureau **WARNS** that noncompliance with any provision of this Resolution and Order, may result in the imposition fines in accordance with Act 57-2014 and the applicable Energy Bureau's regulations or any other appropriate administrative actions, as deemed appropriate by the Energy Bureau.


Be it notified and published.

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<sup>56</sup> See *Id.*



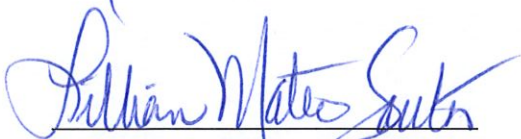




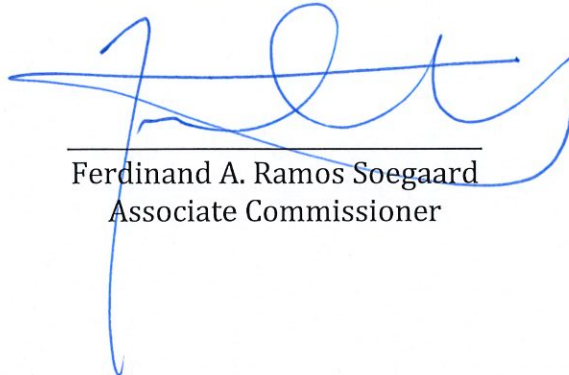
Edison Avilés Deliz  
Chairman



Angel R. Rivera de la Cruz  
Associate Commissioner



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner

### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on March 3, 2020. I also certify that on March 3, 2020 a copy of this Resolution and Order was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeepr.com, c-aquino@prepa.com, and kbolanos@diazvaz.law. I also certify that today, March \_\_\_\_, 2020, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

#### **Puerto Rico Electric Power Authority**

Nitza D. Vázquez Rodríguez  
Astrid I. Rodríguez Cruz  
Jorge R. Ruíz Pabón  
Carlos M. Aquino Ramos  
PO Box 363928  
San Juan, PR 00936-3928

For the record, I sign this in San Juan, Puerto Rico, today March 3, 2020.

  
Wanda I. Cordero Morales  
Clerk  
