

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

NEPR

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IN RE: REQUEST FOR PROPOSALS FOR  
TEMPORARY EMERGENCY  
GENERATION

CASE NO.: NEPR-AP-2020-0001

SUBJECT: REPLY TO PREPA'S  
OPPOSITION TO JOINT  
PETITION FOR INTERVENTION

REPLY TO PREPA'S OPPOSITION TO JOINT PETITION FOR INTERVENTION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., - Enlace Latino de Acción Climática, Comité Yabucoeño Pro-Calidad de Vida, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Sierra Club and its Puerto Rico chapter, Mayagüezanos por la Salud y el Ambiente, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., Campamento Contra las Cenizas en Peñuelas, Inc., CAMBIO Puerto Rico, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "Petitioners"), and respectfully petition this Honorable Bureau for leave to file a reply to PREPA's Opposition To Petitioners' Joint Petition For Intervention.

## ARGUMENT

Petitioners request that the Energy Bureau halt PREPA from proceeding with the RFP, or spending any public funds, until the Energy Bureau can consider public input into the critical questions underlying this RFP:

- Has PREPA examined all alternatives to spending \$1.2B on temporary emergency generation?
- Has PREPA provided adequate public information on the timing or costs of repairing Costa Sur, which could eliminate the need for temporary emergency generation?
- Is PREPA's Request For Proposals biased against renewable generation, distributed generation, and energy efficiency? An RFP biased against these would violate Section 6.32(d) of Act 57-2014, as amended by Law 17-2019.
- Has PREPA provided adequate information about the impact of the \$1.2B Request For Proposals on ratepayers?

The Energy Bureau Commissioners and PREPA's own CEO have already stated that public input on these questions is necessary, before the Energy Bureau can allow PREPA to sign any Lease and Operating Agreement or pay for temporary emergency generation. As PREPA's CEO notes, the Costa Sur plant could be online this summer (even if just temporarily), and the new COVID-19 crisis has also profoundly impacted Puerto Rico energy demand.<sup>1</sup> These new facts further justify closer inspection by the Energy Bureau and the public of PREPA's request to rent emergency generation for \$70M per month.

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<sup>1</sup> Gerardo E. Alvarado León, *La AEE proyecta baja en la factura de luz al menos hasta septiembre*, El Nuevo Día (Mar. 31, 2020), <https://www.elnuevodia.com/noticias/locales/nota/laaeeeprojectabajaenlafacturadeluzalmenoshastaseptiembre-2557429/>.

The Energy Bureau's March 3, 2020 Resolution and Order prohibited PREPA from signing a Lease and Operating Agreement or paying for temporary generation without first providing extensive justification to the Energy Bureau:

6. Before Executing any [Lease and Operating Agreement]... PREPA shall provide to the Energy Bureau the final report assessing the damages of the Costa Sur facility.

7. Before executing any [Lease and Operating Agreement]... 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.

PREPA has not yet provided these documents to the Energy Bureau or to the public, which means the Energy Bureau can grant Petitioners intervention in this matter and allow for their input without any undue delay. In public hearings for the Integrated Resource Plan, Commissioner Edison Avilés-Deliz, PE, Esq., made it clear that these documents must be provided in both Spanish and English, and the purpose of these documents was to allow the Energy Bureau, and the public, to thoroughly examine PREPA's justification to spend \$70M per month to rent temporary generation.<sup>2</sup> Commissioner Avilés-Deliz did so while addressing comments from Ángel Pérez Carrasquillo, Chief of Operations of Costa Sur for 30 years and a member of UTIER:

Before you leave, I think there are two issues that you are talking about that deserve clarification. Number one, you have a concern with replacing generation right now of the capacity that Costa Sur has. Perhaps because it was mentioned in the early afternoon that 500 MW is being proposed with small generators distributed throughout different places. You are concerned that this position has not studied the change

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<sup>2</sup> Negociado de Energía en vivo, *Public Hearing / CEPR-AP-2018-0001* (Feb 11, 2020) <https://www.youtube.com/watch?v=pfYfdxwuJ7U&t=14761s> (emphasis added).

of generation in feeders and the impact this can have. In addition, you also propose that before reaching that determination, there must be a study, an assessment, in Spanish of the condition of Costa Sur to determine the following: First, what is the amount of money necessary to bring the plant back online and to compare this with the alternative that is being proposed. That seems very logical to me. Before we make any determination we must have a study of the existing condition of Costa Sur after the earthquake, the expenses or costs associated with bringing it back to the system, and compare that with the proposal of bringing 500 MW for distribution throughout the island and make a money comparison. We understand that perfectly.<sup>3</sup>

To date, PREPA has not submitted any of the documents required by the Energy Bureau or Commissioner Avilés-Deliz: a study of the impact of adding the proposed 500 MW of generation to feeders, a Final Assessment of Costa Sur, or a Detailed Plan for proposed steps to take at Costa Sur. On impacts to feeders, PREPA has not even provided the public with the general location of the 500 MW of generation, or the types of generation at each location. The public has been completely shut out of the basic facts of this RFP. PREPA will soon extract \$70M per month<sup>4</sup> from ratepayers for up to eighteen months to rent temporary generation under this RFP, yet argues that this RFP process should be an *ex parte* process with zero public

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<sup>3</sup> Negociado de Energía en vivo, *Public Hearing / CEPR-AP-2018-0001* (Feb 11, 2020) <https://www.youtube.com/watch?v=pfYfdxwuJ7U&t=14761s> (emphasis added) (translated from the original Spanish).

<sup>4</sup> Publicly available news reports indicate that PREPA plans to spend approximately \$70 million per month for the LOAs for fossil generation. Manuel Guillama Capella, *En aprietos AEE de cara al verano*, Metro Puerto Rico (Mar. 6, 2020), <https://www.metro.pr/pr/noticias/2020/03/06/aprietos-ae-cara-al-verano.html>. Meanwhile, PREPA acknowledges it only has \$30M in this year's budget to put towards these expenses: the rest would have to come from the federal government; PREPA has no way of knowing if or when those requests would be approved from this Administration. PREPA February 6, 2020 Resolution 4579, <https://aepr.com/es-pr/jg/Resoluciones/Resolution%204759%20-%20RFP%20Temporary%20Emergency%20Generation.pdf>.

participation.<sup>5</sup> Regulation 8815, which governs this process, is authorized by Law 57-2014 which requires that “[t]ransparency and citizen participation in all related processes to the energy service in Puerto Rico will be promoted”.<sup>6</sup> Granting Petitioner's Motion in order to allow for public input into this proceeding falls squarely within the Bureau's power and duty to “[d]isclose all sorts of public interest information, and ... safeguard the rights of all customers and citizen participation in the processes” of the Energy Bureau.<sup>7</sup>

On the Final Assessment and Detailed Plan for Costa Sur: PREPA cannot justify spending \$70M per month on temporary generation until it provides these documents. Commissioner Avilés-Deliz highlighted that these documents must be released in Spanish to allow for public input. Spurred by Petitioners’ Motion, PREPA publicly released over 1,000 pages of on-going assessments of the condition of the Costa Sur plant; this is a step in the right direction, but these documents are not the Final Assessment and Detailed Plan required by PREB.<sup>8</sup> PREPA's report explains that 683 MW of capacity in generation units, currently out of service, will be back online by May 1st.<sup>9</sup> These units were not previously included in PREPA’s publicly available post-earthquake assessments or publicly available justifications for

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<sup>5</sup> PREPA, Opposition to Joint Petition for Intervention and Request for Reconsideration to be Stricken From the Record at 4, 8, Dkt. No. NEPR-AP-2020-001 (Apr. 6, 2020) [hereinafter “PREPA Opposition”].

<sup>6</sup> Law 57-2014 Article 1.2(o).

<sup>7</sup> Law 17-2014, Section 6.3(cc).

<sup>8</sup> PREPA March 31<sup>st</sup> Motion to Inform, p. 14.

<sup>9</sup> Id. The units are Aguirre CC 1, Aguirre CC 2, Aguirre CC Stag 2 (2-2), San Juan 8, San Juan CC STG 5, San Juan CC CT 5, San Juan CC 6, Palo Seco Hidrogas, Mayaguez 2, Mayaguez 4, and Vega Baja 1-1.

temporary generation; they would be more than enough to cancel the need for temporary generation.

Petitioners ask the Energy Bureau for the opportunity to participate in public review of these documents when they are submitted, and to examine the critical questions underlying PREPA's justification for this RFP. PREPA's CEO, José Ortiz, has publicly acknowledged that this is the proper course for this proceeding:

Ortiz said that energy demand has dropped by 9.49% compared to what was projected for this date, mainly due to the "lockdown" or emergency closure decreed by Governor Wanda Vázquez to stop the expansion of COVID-19.

PREPA projected to have a peak demand of 2,418 megawatts, but it has remained at 2,249.

"That makes us more comfortable when it comes to working with the generation and supplying the demand. We have enough generation for now **and the next few months**. People should be calm," he said.

...

"Now, with this situation of (energy) demand so low, we have to rethink whether we need these emergency generators or not. We have a request for proposals and there were more than 38 companies interested in participating, but the award will depend on how the demand behaves," said Ortiz, who stressed that this project was conceived before the COVID-19 pandemic.

PREPA projects that, **even after the coronavirus situation is normalized, energy demand will remain 3% below what was projected.**

"We must have the proposals on April 7 and, once we have them, we have to see the projection of demand. **You have to see what the public's response is going to be, as it will certainly affect the decision regarding generators,**" he added.

**On Costa Sur, he said that PREPA plans to "put it online temporarily" for summer.**

In addition, PREPA is finalizing negotiations with 18 renewable energy projects - all solar - which must be approved this year. They would add 700 megawatts of clean energy to the system, and their cost of production would not exceed 10 cents per kilowatt-hour.<sup>10</sup>

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<sup>10</sup> Gerardo E. Alvarado León, *La AEE proyecta baja en la factura de luz al menos hasta septiembre*, El Nuevo Día (Mar. 31, 2020), (emphasis added) (translated from the original Spanish), <https://www.elnuevodia.com/noticias/locales/nota/laaeeeprojectabajaenlafacturadeluzalmenoshastaseptiembre-2557429/>.

To be clear: PREPA's CEO is emphasizing the necessity of hearing the public's response to the RFP, at the same time that PREPA is urging the Bureau to prohibit any public participation in the RFP process.

If the Energy Bureau grants the Petition to Intervene, Petitioners affirm that they will provide all materials on any schedule the Energy Bureau sets. Since PREPA has not yet provided the Final Assessment and Detailed Plan on Costa Sur, as required by paras. 6 and 7 of the Energy Bureau's March 3<sup>rd</sup> Resolution and Order, public input can be allowed without undue delay.

An orderly consideration of PREPA's justification to spend \$70M per month on renting temporary generation, with public input, is necessary to preserve limited PREPA resources and ratepayer resources. Experience teaches us that rushed decisions and procurements, done without public input, usually result in significant waste of public money: for example, the \$160M owed to Whitefish Energy Holdings after a rushed procurement following Hurricane Maria<sup>11</sup>, or the arrests of the Cobra Acquisitions LLC's CEO and the findings in the audit made by the Department of Homeland Security's Office of Inspector General regarding Cobra's \$1.8B contracts in Puerto Rico.<sup>12</sup> An orderly consideration of this RFP would also help encourage the

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<sup>11</sup> Gov't. of Puerto Rico, Puerto Rico Fiscal Agency and Financial Advisory Authority, Municipal Secondary Market Disclosure Information Cover Sheet (March 19, 2018) <https://emma.msrb.org/ES1119480-ES875449-ES1276723.pdf>.

<sup>12</sup> Department of Homeland Security, Office of Inspector General, FEMA's Cost Eligibility Determination of Puerto Rico Electric Power Authority's Contract with Cobra Acquisitions LLC, OIG-19-52, July 3, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-52-Jul19.pdf>; *Former Cobra executive indicted for bribery* (September 10, 2019), The Journal Record, <https://journalrecord.com/2019/09/10/former-cobra-executive-indicted-for-bribery/>.

participation of local entities, as required by Regulation 8815 Section 4.5(m). PREPA only provided public notice of the RFP to Puerto Rican businesses and workers on April 2<sup>nd</sup>, with mere days left before the bid deadline.<sup>13</sup> PREPA gives no reason why the public notice was delayed for several weeks.

Petitioners agree with PREPA that the Energy Bureau's January 28, 2020 Resolution and Order on EcoEléctrica, L.P.'s Petition to Intervene, in Docket NEPR-AP-2019-0001, is applicable here.<sup>14</sup>

In that case, EcoEléctrica requested intervention into the case during a stage where the Energy Bureau was evaluating PREPA's request to approve contracts to spend ratepayer funds on generation from the EcoEléctrica facility.<sup>15</sup> This proceeding is at a similar stage: the Energy Bureau is waiting for PREPA to submit documents, that will allow the Energy Bureau and the public to evaluate PREPA's request to spend \$70M per month of ratepayer funds on temporary generation.

In Docket NEPR-AP-2019-0001, the Energy Bureau allowed EcoEléctrica to participate in the case, and submit any documents it deemed necessary or helpful to the proceeding, including written comments and suggestions.<sup>16</sup> In this case, Petitioners ask for that same relief; Petitioners can provide timely submissions of documents on any schedule set by the Energy Bureau.

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<sup>13</sup> PREPA, Motion to Inform Additional Publication, Dkt. No. NEPR-AP-2020-001 (Apr. 7, 2020).

<sup>14</sup> PREPA Opposition at 5-8.

<sup>15</sup> Energy Bureau January 28, 2020 Resolution and Order, NEPR-AP-2019-0001, Section III.

<sup>16</sup> *Id.* The Energy Bureau further allowed EcoEléctrica to participate in a Technical Hearing.



The Energy Bureau recognized, as a point in EcoEléctrica’s favor, that entity’s two decades of experience with the topic at hand.<sup>17</sup> Here, Petitioners present witnesses from UTIER with three decades of experience operating the Costa Sur plant. The condition of the Costa Sur facility is a “special and unusual circumstance[] surrounding the Proposed RFP process”<sup>18</sup> and therefore it is imperative that the Energy Bureau hear from the individuals most familiar with the workings of that plant. Petitioners also include parties with decades of experience with Puerto Rico’s grid.

The Energy Bureau recognized, as a point in EcoEléctrica’s favor, the company’s extensive experience in PREB proceedings.<sup>19</sup> Petitioners possess the same if not more experience with PREB proceedings.

Petitioners reiterate that if the Motion for Reconsideration is granted, Petitioners will provide documents on any schedule the Energy Bureau sets forth, and that since PREPA has not provided the documents required by the Energy Bureau’s March 3<sup>rd</sup> Resolution and Order, there is more than enough time to allow for public input in this proceeding.

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<sup>17</sup> *Id.*

<sup>18</sup> Puerto Rico Energy Bureau Resolution and Order at 11, Dkt. NEPR-AP-2020-001, (Mar. 3, 2020).

<sup>19</sup> Puerto Rico Energy Bureau, Resolution and Order, Dkt. NEPR-AP-2019-0001 (Jan. 28, 2020).

## CONCLUSION

Petitioners request that the Energy Bureau halt the Request For Proposal (RFP) process and grant Petitioners intervention into this proceeding, to allow for input from UTIER, local environmental organizations, and the public at large on the critical questions underlying this RFP:

- Has PREPA examined all alternatives to spending \$1.2B on temporary emergency generation?
- Has PREPA provided adequate public information on the timing or costs of repairing Costa Sur, which could eliminate the need for temporary emergency generation?
- Is PREPA's Request For Proposals biased against renewable generation, distributed generation, and energy efficiency? An RFP biased against these would violate Section 6.32(d) of Act 57-2014, as amended by Law 17-2019.
- Has PREPA provided adequate information about the impact of the \$1.2B Request For Proposals on ratepayers?

Petitioners also request that the Energy Bureau order PREPA to make the Request For Proposals publicly available, in accordance with Regulation 8815.

**RESPECTFULLY SUBMITTED** this 8<sup>th</sup> day of April, 2020, in San Juan, Puerto Rico.

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## CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2020, we have filed this Motion via the Energy Bureau's online filing system, and sent to the Puerto Rico Energy Bureau Clerk and legal counsel to: [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov), [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com), [jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com), [n-vazquez@aepr.com](mailto:n-vazquez@aepr.com), [c-aquino@prepa.com](mailto:c-aquino@prepa.com), and [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).

Respectfully submitted on this day April 8, 2020.

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