

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: PETITIONERS'
RESPONSE TO PREPA's APRIL 13
MOTION TO SUBMIT

PETITIONERS' RESPONSE TO PREPA's APRIL 13 MOTION TO SUBMIT

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"),

We appreciate that PREPA is finally providing the RFP documents to the
public. We note that PREPA withheld every single page of this for the critical weeks
while PREB could have used input from the public to decide whether the RFP was
prudent and necessary. The communities of Arecibo, Salinas, Humacao, Ceiba, Vega

Baja, Toa Baja, San Juan, Guayama¹, and Vieques are just now learning that PREPA has secretly been planning for more than three months to place significant new facilities in their midst.² Those communities were never consulted about the possibility of increased pollution impacts, increased traffic impacts, or other impacts to their lives. PREPA never conducted, as Cmmr. Aviles required, a study of how adding new generation would impact the feeders that provide these communities with power. Petitioners' previous submissions detail how PREPA's withholding of information violated the rights of these communities under Regulation 8815 and the Puerto Rico Constitution. The finally-released documents also fail to answer critical questions:

- Is there a new timeline for the RFP?
- How was the schedule affected by the COVID-19 emergency and the governor's executive orders?
- When will PREPA be able to conduct site visits inside the Costa Sur plants?
- Has PREPA or the bidders requested any clarifications of the RFP or of bids?
- Have any interested parties or potential bidders expressed any concerns with the irregularities in this RFP process? Does PREPA have any position on the concerns that have been expressed?

Now that the public is finally allowed to see PREPA's plans, on initial review, we note that the Request For Proposals does not include any information about the profit margins and pricing escalators allowed under the contract. This violates Regulation 8815 Section 4.5(k), which requires that the Request For Proposals include "the parameters approved by the Energy Bureau before issuance of the RFP

¹ The RFP documents incorrectly list Jobos as being in Salinas; it is actually located in Guayama

² PREPA April 15th Filing, PDF pp. 36, 532

in connection with the profit margins and pricings escalators that will be allowed under the Contract."³ Furthermore, an examination of the published and final version of the RFP (Exhibit D to PREPA' s Motion to Submit) reveals that the price formula and parameters (PDF p. 511) differ from those contained in the draft of the contract (PDF pp. 563-564, 604). Similarly, the price formula of the original RFP (PDF p. 24) as evaluated by this PREB, differs from that of the published and final version of the RFP. These are vital contradictions which merit a full and in depth revaluation.

Putting aside the contradictions and looking just at the published contract price parameters: Annex 4 to the Request For Proposals, on PDF p. 604, does not give the ratepaying public any way to know how much PREPA is paying for these resources per kWh, per day, or per resource. The federal government has provided no assurance whatsoever that they will cover these costs, and PREPA has explained that it only has \$30M budgeted for this RFP, which would not even cover two weeks of the rent due for these temporary units. The rest of this expense will fall on ratepayers and PREPA refuses to show them the bill.

These prices and profit margins are especially important in this case, because recent news makes it clear that the winning bidders will be making significant profits

³ Regulation 8815 explains the limits on the contract's pricing escalators and profit margins: "These pricing escalators and profit margins will be based on ranges of acceptable profitability for similar projects in the industry, taking into account approximate construction costs, required returns for third parties and PREPA, and factoring in potential risk premiums reflecting PREPA's unique credit situation. PREPA will make Proponent profitability estimates based on known contract terms, utilizing approximate project costs and escalations based on industry benchmarks and similar customary indicators. The parametric ranges for each specific RFP will be reviewed upfront by the Energy Bureau and their approval is subject to the result of the evaluation conducted by the Energy Bureau."

from contracts for resources that are not even necessary.⁴ In a Nuevo Día article published today and a publicly available webinar last week, PREPA's Executive Director, Mr. José Ortiz, confirmed that the utility will be able to handle summer peak demand without these temporary generation units. Mr. Ortiz explained that peak demand is roughly down 9-10%, 300 MW below what would be expected in a typical year for this month.⁵ PREPA currently has 2700 MW of available capacity to handle demand peaks of 2200 MW. The webinar moderator directly asked the question at the heart of PREPA's claimed need for new temporary generation:

Q: Is PREPA still concerned about being able to serve the load during the summer peak months . . . once the Covid-19 lockdown is lifted?⁶

A: No we're not concerned at all. And to be clear to all the audience . . . by late August we should have 1000 MW in reserve. That's a lot, like never before. . . [B]y May this year we're going to have 3300 [MW of total capacity] and we'll be close to 4000 MW by the end of August. So we'll be better than before because we devoted a lot of money and improvements to many of the units that were non-operational for many years, like San Juan 7, 8, and 9, like the peaking units around the Island, we installed also three new peaking units. So we're going to have a lot of additional sources by the end of August to in order to supply enough capacity.⁷

Mr. Ortiz made these statements about a Puerto Rico grid without the Costa Sur plant online and without new temporary generation. On the Costa Sur plant, Mr.

⁴ Annex 4 makes it clear that PREPA will be forced to pay a fixed monthly Lease Price for each resource even if PREPA never actually takes any energy from the resource.

⁵ "Puerto Rico and COVID-19: Impact on the Grid" Webinar, week of April 13th, (7:40-8:10).

<https://app.gotowebinar.com/unified/index.html#/webinar/1512009214340290315/attend/3214130180151987728>

⁶ Id. (13:45-14:20)

⁷ Id. (14:20-15:25)

Ortiz explained that PREPA would start tests on July 18th to put Costa Sur Unit 5 back into service.⁸ Mr. Ortiz confirmed that even in the worst case scenario, Costa Sur 5 would be back online in the first or second week of August, operating at 90% of its 410 MW nameplate capacity. Mr. Ortiz explained that with that unit back online, “you’re matching what you had before [from the Costa Sur plant].”⁹ On new temporary generation, Mr. Ortiz stated that “I feel very comfortable we’re not going to need this necessarily.” Mr. Ortiz stated that even if Puerto Rico’s COVID-19 shutdown ended and demand rose, PREPA would still not need new temporary generation: “If the lift of the lockdown triggers a lot of demand—I hope so—we’ll be able to manage with our own fleet....”¹⁰

PREPA's Opposition to Petitioners' Motion For Reconsideration and Petition to Intervene claimed that "the finalization of the Emergency Generation RFP is of the utmost importance..." to deal with "an emergency situation which affects PREPA's capacity to comply with the upcoming generation demand."¹¹ PREPA further claimed that any delay in the RFP process would "jeopardize PREPA's ability to provide power to Puerto Rico."¹² Those claims were probably not true then and are certainly not true now. PREPA has not provided any of the new information detailed above,

⁸ “Director ejecutivo de la AEE descarta posibilidad de apagones en verano”, El Nueva Dia, April 23rd, <https://www.elnuevodia.com/noticias/locales/nota/directorejecutivodelaaeedescartaposibilidaddeapagonesenverano-2563531/>. “Contó que, para el próximo 18 de julio, está proyectado “empezar las pruebas” para poner en servicio la unidad #5 de la central Costa Sur, en Guayanilla.”

⁹ Id., April webinar(15:25-15:50)

¹⁰ Id. (15:50-16:40)

¹¹ <https://energia.pr.gov/wp-content/uploads/2020/04/AP20200001A17-OPPOSITION-TO-JOINT-PETITION-FOR-INTERVENTION.pdf> pp. 4, 9

¹² Id. p. 10.

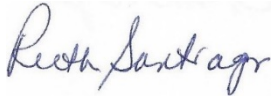
contradicting its earlier incorrect claims on the urgency of this RFP, to the Energy Bureau. As Mr. Ortiz explains, The Energy Bureau now has ample time to evaluate the situation, accept public input, and come to a measured conclusion.

PREPA's April 13th filing also included a chart of Load Forecast v. Generation Availability without Costa Sur. This chart misses several key points, including:

- Costa Sur 5 is now scheduled to be back online in August, which the chart identifies as the time of the "Critical Deficiency".
- The chart does not reflect that PREPA will be bringing 683 MW of generation units “that were non-operational for many years” back online by May 1st, with more to come following that.

In sum, PREPA’s recent filing and the recent news confirms the arguments of Petitioners’ previous submissions. The Request For Proposals fails to comply with Regulation 8815, both in terms of requirements to protect ratepayers from paying extortionate prices, and in terms of public disclosure. The recent news, and the statements of PREPA’s own Executive Director, debunk PREPA’s claims that this generation is urgently necessary. For these reasons, and all the reasons laid out in Petitioners’ earlier filings, the Energy Bureau should halt this proceeding to allow for public input, before PREP can waste ratepayer money on unnecessary temporary generation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2020, we have filed this Response 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, astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com, c-aquino@prepa.com, and kbolanos@diazvaz.law.

Respectfully submitted on this day April 24, 2020.

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