

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

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

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

**SUBJECT: JOINT PETITION FOR  
INTERVENTION, AND MOTION  
FOR RECONSIDERATION**

**JOINT PETITION FOR INTERVENTION AND MOTION FOR  
RECONSIDERATION**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., - Enlace Latino de Acción Climática, Comité Yabucoño 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 petitions this Honorable Bureau for leave to intervene in the proceeding captioned above pursuant to Section 3.5 of Act No. 38 of June 30, 2017, as amended, known as the “Uniform Administrative Procedure Act of the Government of Puerto Rico.” Petitioners also respectfully request that the Energy Bureau reconsider the March 3<sup>rd</sup> Order in this case.

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## I. INTRODUCTION

Petitioners request that the Energy Bureau halt the Request For Proposal (RFP) process to re-examine critical questions, with input from UTIER, local environmental organizations, and the public at large:

- 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 storage?
- Has PREPA provided adequate information about the impact of the \$1.2B Request For Proposals on ratepayers?

PREPA refuses to share a single page of the Request For Proposals with the public, in violation of Regulation 8815; Petitioners request that the Energy Bureau order PREPA to make the Request For Proposals publicly available. Finally, Petitioners request that the Energy Bureau permit intervention into this proceeding, in order to provide input on these critical issues. 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>1</sup>, or the arrests of the Cobra Acquisitions LLC's CEO and the findings in the audit made by the Department of

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<sup>1</sup> GOVT. 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>

Homeland Security's Office of Inspector General regarding Cobra's \$1.8B contracts in Puerto Rico.<sup>2</sup>

On January 6 and 7, 2020, Puerto Rico experienced two major seismic events. The area most affected was the south of the island. The seismic events damaged the Costa Sur gas-fired plant, the EcoElectrica gas-fired plant, and also the gasport that provides fuel to these two plants. PREPA noted no damage to the island's renewable resources or distributed generation.<sup>3</sup>

PREPA's preliminary assessment determined that Costa Sur would be back online in January 2021, at the earliest. PREPA planned to submit a final assessment no later than April 1st. PREPA claims the following impacts from the loss of the Costa Sur plant<sup>4</sup>:

- immediate shortage of reserve capacity
- shortage of operating capacity to serve peak demand months, starting June 2020
- shortage of primary and secondary system frequency regulation
- extensive use of less efficient and less flexible generation units that operate using higher-cost fuels, that result in higher operating costs
- reduced power system inertia, and dynamic and transient stability margins
- alteration of PREPA's generation fleet maintenance schedules

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<sup>2</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/>.

<sup>3</sup> PREPA January 20, 2020 Presentation, Slide 20.

<sup>4</sup> PREB March 3<sup>rd</sup> Order and Resolution <http://energia.pr.gov/wp-content/uploads/2020/03/Resolution-and-Order-NEPR-AP-2020-0001.pdf>

Before consulting with PREB or the public, or waiting for the final assessment on Costa Sur, PREPA decided to begin a process to find replacement resources. Under Regulation 8815, the first step of that process would be to convene a Project Committee, the specialized background necessary to understand the scope of the Project and the needs of PREPA, as detailed in the Integrated Resource Plan.<sup>5</sup> The public has not been told whether that has occurred.

Next, PREPA should have provided the Project Committee's recommendation, as well as the Project Committee meeting minutes, to the PREPA Board.<sup>6</sup> The public has not been told whether PREPA took that required step.

On February 12<sup>th</sup>, PREPA filed a Notification and Urgent Request with the Energy Bureau, seeking approval of a Request For Proposals For Temporary Emergency Generation.<sup>7</sup> PREPA must provide the Energy Bureau with a "detailed narrative, with specific examples, regarding how the proposed project and terms of the contract, as described in the proposed RFP and approved by the Board, complies with the IRP".<sup>8</sup> The submission to the Energy Bureau must also include information on the proposed project, parameters to determine the profit margin and approved beforehand by the Energy Bureau, compliance by PREPA with Regulation 8815, the statutory authority and other laws and regulations related to procurement processes.

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<sup>5</sup> Under Regulation 8815, the first step of that process would be to convene a Project Committee, the specialized background necessary to understand the scope of the Project and the needs of PREPA, as detailed in the Integrated Resource Plan. Regulation 8815, Articles 3.1, 4.1.

<sup>6</sup> Regulation 8815, Article 4.

<sup>7</sup> Id. PREPA also filed a request that the entirety of the Request For Proposals, and all attachments, be withheld from the public. March 3rd 2020 Resolution and Order p. 3.

<sup>8</sup> Regulation 8815, Article 4.2.

The profit margins and price escalators for the project must be based on industry costs and profitability benchmarks in accordance with the nature of the project.<sup>9</sup> Again, the public has not been informed whether PREPA met these requirements.

PREPA's Proposed RFP would seek approval for fossil fuel generators at certain locations around the island; PREPA refuses to disclose those locations to the public, or the communities where these generators will be located.<sup>10</sup> From the scraps of information that are available to the public on PREPA's Proposed RFP, it appears to limit the percentage of the total RFP that can be served by renewables and storage, and limits these renewables to specific locations.<sup>11</sup> Again, the limit on renewables, and the specified locations, are being withheld from the public.

On March 3<sup>rd</sup>, the Energy Bureau approved the Proposed RFP, with twelve conditions.<sup>12</sup> On March 7<sup>th</sup>, PREPA published the RFP on the website of Power Advocate, but only allowed companies considering bids to access the document, not

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<sup>9</sup> Regulation 8815, Article 4.5(k): "the parameters approved by the Energy Commission before issuance of the RFP in connection with profit margins and pricing escalators that will be allowed under the Contract as provided in Section 4.2 of this Regulation. 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 Commission and their approval is subject to the result of the evaluation conducted by the Energy Commission."

<sup>10</sup> PREB March 3<sup>rd</sup> Order and Resolution, footnote 10.

<sup>11</sup> PREB March 3<sup>rd</sup> Order and Resolution, footnote 12 <https://energia.pr.gov/wp-content/uploads/2020/03/Resolution-and-Order-NEPR-AP-2020-0001.pdf>

<sup>12</sup> March 3<sup>rd</sup> Order. On March 5<sup>th</sup>, PREPA submitted a revised Proposed RFP; PREPA claimed that it had incorporated all of the conditions laid out by the Energy Bureau's March 3<sup>rd</sup> Order. <http://energia.pr.gov/wp-content/uploads/2020/03/Motion-to-Submit-Revised-Proposed-RFP-Documents-NEPR-AP-2020-0001.pdf>

the general public.<sup>13</sup> PREPA did not take the necessary steps to provide the RFP on the Energy Bureau website, as required by Regulation 8815, Section 4.4.<sup>14</sup>

In summary, PREPA has failed to provide public notice of compliance with the provisions of Regulation 8815, PREPA has failed to make the RFP itself public as Regulation 8815 requires, and the few scraps of information that the public does have on the RFP do not answer critical questions. Petitioners request that the Energy Bureau reconsider its March 3<sup>rd</sup> approval, halt this process to allow for public input, require PREPA to make the RFP public, and allow Petitioners to intervene in this process.

## II. REQUEST FOR RECONSIDERATION

To safeguard the public interest, the Petitioners seek reconsideration and/or modification of the Energy Bureau's March 3, 2020 Resolution and Order in docket number NEPR-AP-2020-0001 granting PREPA authorization to proceed with a Request for Proposals for temporary, emergency generation units for the generation shortfall related to the alleged inoperability of the Costa Sur units 5 & 6 as a result of earthquake damage. The basis for the request for reconsideration and/or modification includes 1) insufficient proof of a generation deficit and current energy demand, 2) failure to consider publicly available evidence of the operability of the

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<sup>13</sup> <https://aeepr.com/es-pr/Paginas/Suplidores/DetalleSubasta.aspx?id=1351>. See also Certification of Ingrid M. Vila Biaggi in Support of Petition For Intervention and Motion For Reconsideration, attached as Exhibit A

<sup>14</sup> Local workers, suppliers, contractors, and investors, diligently watching that site for RFPs, would not have received notice of the RFP, as intended by Law 83 and Regulation 8815. The failure to provide adequate public notice violates Puerto Rico policy to encourage the participation of local entities. Regulation 8815 Section 4.5(m).



Costa Sur units, 3) reliance on PREPA management's erroneous allegations of a looming generation capacity shortfall, 4) inconsistency of the March 3, 2020 Resolution and Order with the Renewable Portfolio Standard (RPS) and the Integrated Resource Plan (IRP), 5) lack of consideration of the economic and financial impacts of leasing temporary generation, 6) not recognizing PREPA's fossil fuel bias, 7) promoting dependence on the possibility of reimbursement by the federal government for both leasing of generators and fuel costs, 8) reliance on dubious gas imports and dual-fuel units and 9) noncompliance with applicable legal provisions.

Finally, the Energy Bureau's March 3, 2020 Resolution and Order does not comply with the Uniform Administrative Procedure Act, especially with Sections 3.14 and 3.15 of Law 38-2017 requiring that any final order or resolution must include the availability of the remedy of reconsideration or review as the case may be.<sup>15</sup>

**A. PREPA has ignored expert opinions that the Costa Sur plant can be back online far sooner than PREPA claims.**

Clearly, it would be far more effective to repair the Costa Sur plant, at a cost of about \$30M, than to spend \$70M per month on temporary emergency generation. At the Integrated Resource Plan public hearing in San Juan, the Energy Bureau heard from Ángel Pérez Carrasquillo, Chief of Operations of Costa Sur for 30 years, in his personal capacity.<sup>16</sup>

Chief Pérez recognized that the social responsibility is to make the energy transition. Engineer Pérez stated:

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<sup>15</sup> Law 38-2017, Sections 3.14, 3.15.

<sup>16</sup> Negociado de Energía en vivo, *Public Hearing / CEPR-AP-2018-0001* (Feb 11, 2020) <https://www.youtube.com/watch?v=pfYfdxwuJ7U&t=14761s>

“The Costa Sur plant was impacted by the earthquakes, but this does not mean that it is not restored or ready in a reasonable time for the generating units to function. At 11 c /kWh, Costa Sur is the cheapest, after Ecoeléctrica.”<sup>17</sup>

About the condition of the Costa Sur plant, Chief Perez shared that it is salvageable at a lower cost. “An alternate generation is not necessary, and there is not in place a strategic plan for that alternate generation. In our opinion, the location of these emergency generation sources are being a bit improvised. I understand that at a lower cost and in less time than PREPA’s Senior Management mentions, we can return those 820 MV to the line.”

In regards to repairs to Unit 5 at Costa Sur – Chief Pérez explained the studies could have been done parallel to the mitigation of any temporary shortage, as it was done with Hurricane Maria, where the units were restored 17 days later. Chief Pérez was concerned about the moment where there would be lack of energy, that he will like to prevent the problem of energy deficiency that may be present for 5-6 months. “We can return the units in such a way that things can be done calmly with the IRP and accelerate the investigative processes of the damages caused in Costa Sur. I was there 15 minutes after the earthquake – to my understanding, the units can be restored; first Unit 5 and then Unit 6. The initial damage analysis that was promulgated should be reevaluated at Costa Sur, and you should make a field visit

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<sup>17</sup> Commissioner Avilés pointed out that PREPA’s hydroelectric plant were cheaper; PREPA’s Request For Proposals fails to consider hydroelectric resources. The Integrated Resource Plan, Section 4.2.1.4, states that PREPA could permanently increase hydroelectric capacity by 36 MW with a \$100M investment, which is a small fraction of what PREPA intends to pay through this RFP for temporary generation.

to analyze and verify for yourselves how the damage can be repaired; and believe in us.”

Chief Pérez stated that the closure of the Costa Sur plant is shocking in a historic time... “We understand that we have to roll up our sleeves and work on the mitigation plan with the plant personnel, who did this work after Hurricane Maria. As trembles continue, the plant is still intact. It is more cost-effective to re-energize Costa Sur.”

Commissioner Edison Avilés-Deliz, PE, Esq. acknowledged Chief Pérez’s testimony and explained:

“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 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. On the other hand, in regards to the IRP, the change of centralized generation to a distributed generation is being done by law. This means that we are going to place sources of generation closer to the consumer and we have to analyze and compare losses in the centralized system and a number of elements associated with that in order to improve the capacity of certain feeders when the distributed generation is brought closer to the consumer. That is also an engineering analysis and it is also considered in the IRP. I believe that if that is what you wanted to convey, we understood it.<sup>18</sup>

On February 16<sup>th</sup>, Johnny Rodríguez Ortiz, the President of Asociación de Jubilados de la Autoridad Energía Eléctrica (AJAEE), concurred with Chief Pérez's testimony that the Costa Sur plant could be repaired far sooner than PREPA claimed.<sup>19</sup> In fact, Mr. Rodríguez argued that the plant could be repaired in a matter of weeks.<sup>20</sup> Mr. Rodríguez has 29 years' experience working at the Costa Sur plant.

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<sup>18</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).

<sup>19</sup> *Asociación de Jubilados de la AEE reta a José Ortiz a inspeccionar Costa Sur acompañado de ingenieros, jubilados y prensa*, Metro Puerto Rico, (Feb. 16, 2020), <https://www.metro.pr/pr/noticias/2020/02/16/asociacion-jubilados-la-ae-reta-jose-ortiz-inspeccionar-costa-sur-acompanado-ingenieros-jubilados-prensa.html>

<sup>20</sup> <https://www.villalbaonlinepr.com/~villalb3/index.php/noticias/5158-jubilados-de-la-ae-rechazan-el-cierre-de-costa-sur>

The request for new fossil power plants has been part of PREPA's agenda since Hurricane María. PREPA lacks credibility and the officials calling for the new fossil plants may be exaggerating the damage to the Costa Sur plant to advance the buildout of methane gas infrastructure. PREB should take administrative notice of the publicly available information published in media outlets concerning the disputed inoperability of the Costa Sur Units and the time it will take to get the units in service. The seismic activity and the alleged damages to the Costa Sur Power Plant are being used as a justification to add gas-fired generation to the Puerto Rico electric system; PREPA claims that it can obtain funds from the Federal Emergency Management Agency (FEMA), but the only guaranteed source of funds for this RFP is the \$30M in emergency funds in PREPA's budget.<sup>21</sup>

During the Integrated Resource Plan evidentiary hearing, PREPA provided all parties with a public copy of "Inspection Summary of Earthquake Damages at Costa Sur". PREPA apparently filed a motion seeking confidential treatment of that report at some point, according to FN 5 of the Bureau's March 3<sup>rd</sup> Resolution and Order in this docket. That motion is still pending, but since PREPA itself made the report public, Petitioners suggest that the confidentiality motion is moot. This is also another example of abuse of confidentiality designations by PREPA. Petitioners can provide a copy of the public report upon request.

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<sup>21</sup> PREPA February 6, 2020 Resolution 4579, <https://aeepr.com/es-pr/jg/Resoluciones/Resolution%204759%20-%20RFP%20Temporary%20Emergency%20Generation.pdf>

The Energy Bureau's March 3rd Resolution and Order wisely prohibits PREPA from signing any LOA or paying for temporary emergency generation before PREPA provides a final report on the damages at the Costa Sur plant, and the plan to repair the plant. Petitioners ask that the Energy Bureau also extend a period of time, before PREPA can sign an LOA or spend ratepayer funds on temporary generation, for UTIER and knowledgeable members of the public to provide expert opinions on the damages at the Costa Sur plant and potential costs and timing of repairs.

**B. PREPA has not provided public justification for new generation.**

PREPA has not provided the public with a sufficient justification of spending billions of dollars on temporary emergency generation.: On February 24, 2020, Puerto Rico had 2,885 MW of available capacity.<sup>22</sup> PREPA forecasts 2020 peak demand to be 2,703 MW, after accounting for energy efficiency programs and distributed renewable generation.<sup>23</sup> Although some of the electric generation units have been designated limited use pursuant to Title 40 Code of Federal Regulations (CFR) Section 63.10042, the available capacity of the existing electric generation units exceed peak demand, with additional capacity to spare. PREPA prepared a chart titled “Load Forecast vs. Generation Availability, Generation Availability without Costa Sur, January to December 2020.”<sup>24</sup> That chart shows that PREPA’s peak demand, even through the summer months, is covered by PREPA’s baseload units and peakers. In the chart,

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<sup>22</sup> PREPA's Generation Directorate Generation Fleet Status, Rev. 02/24/2020.pdf. Exhibit B to PREPA's March 12, 2020 Response to Information Requests During IRP Evidentiary Hearings, CEPR-AP-2018-0001 See also PREPA January 2020 Presentation, Slide 20.

<sup>23</sup> Integrated Resource Plan Exhibit 3-26.

<sup>24</sup> This chart was part of PREPA’s March 12, 2020 Response to Information Requests During IRP Evidentiary Hearings, CEPR-AP-2018-0001.

PREPA highlights the difference between the load forecast and PREPA's baseload capacity: this misses the point because PREPA's Request For Proposals would not add baseload capacity. In addition, PREPA's figures, laid out above, do not account for the roughly 234 MW of self-generation owned by PREPA's large customers.<sup>25</sup> These customers are especially well situated to work out agreements with PREPA for demand response, load management, or interruptible loads. Nor does PREPA's Request For Proposals take advantage of "the biggest untapped [Virtual Power Plant] resource in the world": the distributed solar and storage already installed on the island. Finally, PREPA has not provided the public with a sufficient explanation of why only a quarter of its baseload generation capacity is available, or whether investments could improve available baseload generation capacity.

In sum, PREPA has failed to demonstrate that spending \$1.2B on emergency generation is the best option to satisfy summer peak demand. PREPA has several other mechanisms that can adequately address the approximate 500 MW<sup>26</sup> capacity shortfall from the temporary shutdown of the Costa Sur units.

On March 12, 2020, PREPA submitted a document in the IRP case titled, *PREPA Production of Documents in Response to Information Requests Made During the IRP Hearing*. Although the referenced Response is woefully incomplete it includes an Exhibit B, titled, PREPA's Generation Directorate Generation Fleet Status, Rev. 02/24/2020. Exhibit B is riddled with deficiencies, as an initial matter, there is no

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<sup>25</sup> PREPA January 2020 Presentation, Slide 15.

<sup>26</sup> PREPA's January 2020 Presentation, Slides 6 and 11 show that Costa Sur's available capacity at the time of the January 2020 seismic events was about 500 MW.

indication of the criteria that PREPA is using to determine the available capacity of each unit. The generation capacity numbers appear to be totally arbitrary and flat out wrong. For example, Aguirre steam unit 1 is listed with available capacity of 110 MW, a far cry from its 450 MW installed capacity. Aguirre steam 1 & 2 are base load units, the biggest in the system and no explanation is provided for the drastic reduction in available capacity. Similarly, Aguirre Steam unit 2 is listed as not available at all. But PREPA has stated that this unit was repaired and put into service or expected to start up soon. Therefore, the Exhibit does not reflect the real generation capacity. The PREPA Response attempts to make the case for the 500 MW of new fossil generation by underestimating the existing baseload capacity.

On February 25<sup>th</sup>, PREPA filed a Supplement to its original motion with the Energy Bureau. That Supplement contained a Load Forecast vs. Generation Availability/Outage Schedule, Updated 24 Sep 2020 and a Load Forecast vs. Generation Availability, Generation Availability without Costa Sur, January to December 2020, as Exhibits B and C, respectively.<sup>27</sup> The Energy Bureau did not grant confidentiality for these two documents, yet PREPA has not provided the Load Forecast vs. Generation Availability/Outage Schedule, Updated 24 Sep 2020 to the public.<sup>28</sup> Petitioners demand to see this document, particularly to examine PREPA's claims about installed and operating capacity of its generation resources.

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<sup>27</sup> PREB March 3<sup>rd</sup> Resolution and Order, p. 3.

<sup>28</sup> The Load Forecast vs. Generation Availability, Generation Availability without Costa Sur, January to December 2020 was part of PREPA's March 12, 2020 Response to Information Requests During IRP Evidentiary Hearings, CEPR-AP-2018-0001.



**C. The RFP Appears Biased Against Renewable Generation and Distributed Generation. Both have several resiliency advantages versus fossil fuel generation.**

From the scraps of information available to the public, it appears that PREPA has limited the amount of the RFP that can be satisfied with renewables and storage, and further limited renewables and storage installation to certain specific locations.<sup>29</sup> And finally, PREPA has failed to take advantage of “the biggest untapped Virtual Power Plant resource in the world: the distributed generation and storage **already in place** on the island.<sup>30</sup> All of these failures can be ascribed to PREPA’s historical bias in favor of large, centralized fossil fuel plants, and against renewables and distributed generation. Here are just a few examples of this bias from the Integrated Resource Plan<sup>31</sup>:

- PREPA and Siemens overestimated costs of distributed generation by 50%
- PREPA and Siemens overestimated costs of utility-scale solar by 30%
- PREPA and Siemens underestimated costs of methane
- PREPA and Siemens underestimated costs of CCGTs
- PREPA and Siemens wrongly assumed that only thermal resources and not renewables could serve critical loads after a major event, when the earthquake showed that the opposite was true
- PREPA and Siemens failed to incorporate battery storage capability to replace thermal reserve
- PREPA and Siemens failed to reveal that using distributed generation instead of new gas-fired plants could save billions in planned transmission spending
- PREPA and Siemens failed to analyze the climate, environmental, health and safety impacts from gas-fired generation

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<sup>29</sup> PREB March 3<sup>rd</sup> Resolution and Order, footnotes 10 and 12. <https://energia.pr.gov/wp-content/uploads/2020/03/Resolution-and-Order-NEPR-AP-2020-0001.pdf>

<sup>30</sup> Negociado de Energía en vivo, *Evidentiary Hearing / CEPR-AP-2018-0001*, YouTube (Feb. 7, 2020), <https://youtu.be/zkGmgsj6OTs?t=13114>.

<sup>31</sup> Local Environmental Organizations’ Final Substantive and Legal Brief, CEPR-AP-2018-0001

PREPA's gas-heavy Request For Proposals violates the Regulation 8815 requirement that PREPA's Requests For Proposals facilitate the "modernization and upgrade" of the grid. The people of this island have made it clear, through Law 17-2019, that "modernization and upgrade" of the island's grid requires PREPA to "maximize the use of renewable energy", and at the same time "aggressively reduce the use of fossil fuels" and "minimiz[e] greenhouse gas emissions . . . ." <sup>32</sup> During the Integrated Resources Planning proceeding, numerous intervenors and experts set forth testimony and evidence that adding new fossil fuel generation is antithetical to the Puerto Rico's goals, and would actually "hinder the development of a modern system that integrates distributed generation, renewables, and storage, in violation of Law 17-2019". <sup>33</sup> The record in that proceeding further shows that renewables and storage have significant advantages vs. fossil fuel generation in terms of affordability and resiliency, and thus renewables and storage would be better suited to the intended goals of this RFP than fossil generation.

During the Integrated Resource Plan proceeding, intervenors also pointed out that PREPA was advancing plans for gas-fired resources without the benefit of competent and conflict-free advisors. Siemens' consulting arm, who PREPA deferred to heavily in creating the Integrated Resource Plan, has a vested interest in having PREPA purchase gas-fired equipment from Siemens' manufacturing arm. In fact, Siemens has been pressing PREPA to purchase its own equipment, for example the

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<sup>32</sup> Law 17-2019 Section 1.5(6)(b), Section 1.11(d).

<sup>33</sup> Law 17-2019 Section 1.10(d).

SGT-400 and SGT-750 small thermal units, from the very beginning of the Integrated Resource Plan process.<sup>34</sup> PREPA also defers to King & Spalding on transactions involving gas and gas-fired equipment: but King & Spalding has a vested interest in having PREPA purchase gas, equipment and services from Fortress Investment Group and its subsidiaries, since these companies are clients of King & Spalding.<sup>35</sup> Siemens failed to acknowledge that PREPA's consultants, Siemens and King & Spalding, both have a vested interest in having PREPA build out gas-fired infrastructure. Arctas Capital Group points out that neither Siemens nor King & Spalding are "commercially recognized experts in arranging LNG supply, price, and commercial terms".<sup>36</sup>

**D. PREPA has not provided adequate information about the impact of the RFP on ratepayers.**

Publicly available news reports indicate that PREPA plans to spend approximately \$70 million per month for the LOAs for fossil generation.<sup>37</sup> That figure in the first year alone amounts to \$840M, with the six-month extension, the cost of the emergency generators would increase an additional \$420M to a total of \$1.26B. 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;

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<sup>34</sup> Siemens, Resilient by Design: Enhanced Reliability and Resiliency for Puerto Rico's Electric Grid (2018), <https://assets.new.siemens.com/siemens/assets/api/uuid:ece862442ca24d0cfce7ff0a9a0f94ac1b3cb9de/version:1532100326/puertoricoresiliency-wp-fprint.pdf>. See also Local Environmental Organizations' Final Substantive & Legal Brief, CEPR-AP-2018-0001, p. 68.

<sup>35</sup> Local Environmental Organizations' Final Substantive & Legal Brief, CEPR-AP-2018-0001, p. 68.

<sup>36</sup> Arctas Final Legal & Substantive Brief, CEPR-AP-2018-0001, pp. 15, 17.

<sup>37</sup> 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>

PREPA has no way of knowing if or when those requests would be approved from this Administration.<sup>38</sup>

In January 2020, PREPA submitted a report to the Energy Bureau titled “Financial Impact after M6.4 Earthquake on January 7, 2020 (Overview for the Energy Bureau).”<sup>39</sup> PREPA withdrew the motion for confidential treatment of this document, but has not yet provided it to the public. Petitioners demand to see this document, particularly to examine the impact of this RFP on ratepayers.

In contrast, the PREPA Executive Director estimated that the Costa Sur repairs will cost about \$ 30 million.<sup>40</sup> PREPA’s February 6, 2020 Resolution confirms that these repairs will only cost “tens of millions of dollars”, compared to the billions of dollars PREPA would have to otherwise spend on temporary emergency generation.<sup>41</sup> This makes it critical for PREB to closely analyze the possibility that a \$30M Costa Sur repair project, which actually fits PREPA’s budget, could eliminate the need for \$1.2B of temporary emergency generation.

PREB must also consider whether the public interest and the safety and wellbeing of Puerto Rico residents and businesses would be better served with implementation of permanent on-site solar and compliance with the RPS. The \$70M

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<sup>38</sup> PREPA February 6, 2020 Resolution 4579, <https://aeepr.com/es-pr/jg/Resoluciones/Resolution%204759%20-%20RFP%20Temporary%20Emergency%20Generation.pdf>

<sup>39</sup> PREB March 3rd Resolution and Order, footnote 6. <https://energia.pr.gov/wp-content/uploads/2020/03/Resolution-and-Order-NEPR-AP-2020-0001.pdf>

<sup>40</sup> Ayeza Díaz Rolón, *Sin fecha para reparar Costa Sur*, EL VOCERO (March 6, 2020) [https://www.elvocero.com/gobierno/sin-fecha-para-reparar-costa-sur/article\\_77d92020-5f50-11ea-906d-5f6dca1914e0.html](https://www.elvocero.com/gobierno/sin-fecha-para-reparar-costa-sur/article_77d92020-5f50-11ea-906d-5f6dca1914e0.html)

<sup>41</sup> PREPA February 6, 2020 Resolution 4579, p. 2. <https://aeepr.com/es-pr/jg/Resoluciones/Resolution%204759%20-%20RFP%20Temporary%20Emergency%20Generation.pdf>

per month figure is disproportionate, excessive and unreasonable compared to the amount of temporary generation that would be provided. The opportunity cost of the LOAs displaces the possibility of permanent on-site solar and renewables that would help to achieve the RPS.

The RFP will cost Puerto Rico ratepayers hundreds of millions of dollars to rent fossil fuel infrastructure. This will include a significant profit margin for foreign companies providing fossil fuels and fossil fuel infrastructure. The PREPA senior executives and the government have indicated that the funds for methane gas infrastructure and the reconstruction of the current system will come from federal sources.<sup>42</sup> Implicit in this approach is the presumption that the people of Puerto Rico will be getting a “free lunch” and that they can request large sums for infrastructure of doubtful utility and security because it is paid by the federal government and ultimately, US taxpayers. This reflects a mentality of dependence driven by the methane gas industry and corporations that sell gas generation units. The “free” methane gas infrastructure would tie Puerto Rico to methane gas-burning plants and endanger public health and safety. The substantial amount of investment for the LOAs for the temporary, emergency generation would affect the options in the IRP and the rights of intervenors. The addition of this infrastructure, even on an emergency or temporary basis would impede the adoption of rooftop solar and related options and any measure of energy democracy and self-determination in Puerto Rico.

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<sup>42</sup> PREB March 3<sup>rd</sup> Resolution and Order, p. 3, noting that PREPA will “seek Federal Emergency and Management Administration funding”.

Any emergency procurement process for new generation should be directed to adding permanent on-site renewables and Battery Energy Storage Systems (BESS), especially since those resources performed well during the seismic events. Dozens of PREPA workers have already been trained to install distributed solar systems and these installations could also be supported by and done in conjunction with local onsite renewable energy contractors.

In the alternative, should the PREB decide not to reconsider the March 3, 2020 Resolution and Order and/or grant intervenor status, the Petitioners respectfully request that PREB modify the Resolution and Order to safeguard the public interest. The alleged need for ALL of the 500 MW of temporary, emergency generation should be re-evaluated in light of publicly available information that points to the operability of the Costa Sur units and PREPA's admission that the units can be repaired for a fraction of the cost of one months rental charge under the proposed LOAs. The PREB should ensure that the RFP process offer fair opportunity to renewables. The PREB should guarantee transparency and that the term of the LOA be contingent on the report related to the condition of the Costa Sur units, pursuant to condition number 6, page 14 of the Resolution. Another indispensable modification should address the price of the expected contracts (LOAs): PREB should include guidelines or criteria in the price of the temporary, emergency generation. The \$70 million per month rent is excessive considering the availability of least cost customer-sited generation. The draft Integrated Resource Plan (IRP) prepared by Siemens Industry, Inc. for PREPA indicates that the costs of customer alternatives are lower than the final all-in Energy

System Modernization (ESM) and S4S2 plans generation portfolio rates. (Pages 8-40 and 8-59 of the IRP, third draft dated 06/07/2019). The cost of customer-sited generation is significantly lower than the total rate even before the non-bypassable component is added. The Petitioners emphasize that the amount of the investment is such that it will or could affect the IRP and thus the rights of intervenors and energy stakeholders.

**E. PREPA must make the Request For Proposals public, with very limited and discrete redactions of information that is truly a Trade Secret or Critical Energy Infrastructure Information.**

PREPA requests a blanket designation of the entire RFP as confidential, claiming that the legal standards on Trade Secret and Critical Energy Infrastructure Information covers the entire document. This does not address the applicable federal or Puerto Rico law. Those laws do not allow a utility to unilaterally decide to withhold entire documents from the public without explanation; rather they only authorize the government to allow limited withholding in certain “exceptional cases” and after extensive justification by the utility, which has not been provided here. There can be no legitimate reason that the proposed locations for generation, or the limits on renewable generation, must be withheld from the public. Mainland utilities routinely provide Requests For Proposals to the public, with discrete, specific redactions of information that is truly confidential or CEII. For example:

- Northern Indiana Public Service Company:

<https://www.nipsco-rfp.com/RFP-Documents>

- El Paso Electric Company:

[https://www.epelectric.com/files/html/RFPs/2019\\_RFP.pdf](https://www.epelectric.com/files/html/RFPs/2019_RFP.pdf)

- Vectren:

<http://vectrenrfp.rfpmanager.biz/>

- i. PREPA ignores the applicable Puerto Rico and federal regulations on Critical Energy Infrastructure Information.*

18 C.F.R. § 388.113 defines Critical Energy Infrastructure Information and the procedure for the government to determine what constitutes Critical Energy Infrastructure Information. That definition does not allow a utility to unilaterally issue a blanket designation of entire documents as Critical Energy Infrastructure Information:

Critical energy infrastructure information means *specific* engineering, vulnerability, or *detailed* design information about proposed or existing critical infrastructure that:

- i. Relates details about the production, generation, transportation, transmission, or distribution of energy;*
- ii. Could be useful to a person in planning an attack on critical infrastructure;*
- iii. Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and*
- iv. Does not simply give the general location of the critical infrastructure.*

18 C.F.R. § 388.113(c)(2) (emphasis added). The procedures for determining what constitutes Critical Energy Infrastructure Information, at 18 C.F.R. § 388.113, make it clear that only FERC has the authority to make the determination as to what



constitutes Critical Energy Infrastructure Information under this regulation, in response to a utility's request. To our knowledge, PREPA has not made any such request.

Looking at Puerto Rico law: Regulation No. 9021, Section 2.03(J) recognizes that only seven specific types of information can be withheld as Critical Energy Infrastructure Information:

- (1)(a)(iii): a schematic map of the transmission and subtransmission network.
- (1)(a)(iv): a map of transmission and subtransmission lines.
- (1)(b)(i)(C): a *portion* of the load flow or other system analysis of the utility's distribution system performance.<sup>43</sup>
- (1)(d)(vi)(A): descriptions and transcription diagrams of the base case load flow studies.
- (1)(d)(xii): a one-line diagram of the transmission network.
- (2)(b): System Stability Analysis.
- (2)(c): identification of thermal and voltage reliability issues in the transmission and distribution systems.

The Energy Bureau spent time and effort carefully considering information that could be Critical Energy Infrastructure Information and chose these seven specific items as the “exceptional cases” to be withheld from the public.<sup>44</sup> The Energy Bureau's decision to limit the Critical Energy Infrastructure Information designation clearly demonstrates that the Energy Bureau did not intend for any other part of the submission to be withheld from the public.

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<sup>43</sup> This regulation requires PREPA to identify the specific portion that is CEII.

<sup>44</sup> 22 L.P.R.A. § 1054n(a), (c).

- ii. *PREPA's withholding request fails to comply with the Energy Bureau's procedural requirements to withhold Trade Secret information, and fails to address applicable Puerto Rico law on Trade Secret designation.*

Puerto Ricans have a constitutional right to information possessed by PREPA<sup>45</sup>, and a statutory right to information about the Puerto Rico grid.<sup>46</sup> To protect these rights, the Legislature limited PREPA's authority to withhold documents as Trade Secrets, and the Energy Bureau created a rigorous procedure for PREPA to justify each such designation. PREPA has failed to address applicable Puerto Rico law and ignored the Energy Bureau's procedure.

To the extent PREPA has a good faith belief that documents or data within the RFP qualify for Trade Secret treatment, then PREPA must follow the Energy Bureau's procedure and justify that belief with specific reasoning and documentation.<sup>47</sup>

The most recent Puerto Rico law on Trade Secret designations is in Act 57-2014, the Energy Transformation Act:

In accordance with the public policy established in § 1051(o) of this title, every information, data, statistics, reports, plans, and documents received and disclosed by any of the entities created under this chapter, PREPA, and every electric power company shall be subject to the following principles . . . . *data produced by employees, officials, or contractors* working for the Commonwealth of Puerto Rico *shall not be subject to any copyright, patents, trademarks, or trade secret.*

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<sup>45</sup> *Davila*, 82 D.P.R.at 281 n.9.

<sup>46</sup> Act 57-2014, Energy Transformation Act (codified at 22 L.P.R.A §§ 1051–1056).

<sup>47</sup> Including documentation of the “reasonable security measures” that have been taken to protect each item, Act 80-2011, Section 4 (pdf pp. 5-6).

22 L.P.R.A. § 1051b (emphasis added). Act 57-2014 permits only “[r]easonable restrictions based on doctrines of privacy, security, and evidentiary privileges” which “shall not be . . . broader than . . . required.” *Id.* § 1051b(a)(4), (7).

PREPA is a public agency of the Commonwealth of Puerto Rico.<sup>48</sup> PREPA must therefore square its Trade Secret withholding claims with 22 L.P.R.A. § 1051b, which states that the work, documents, and data produced by the Commonwealth (or contractors working for the Commonwealth, like Siemens) are “not subject to . . . trade secret” claims. *Id.* § 1051b(7).

In its August 31, 2016 Order on Confidentiality in Docket CEPR-MI-2016-0009, the Energy Bureau set forth a specific process that PREPA must follow for each designation of information as a Trade Secret. The August 2016 Order requires that PREPA provide the reasons that each specific document meets the claimed designation, and documentation supporting the confidentiality claim.<sup>49</sup> So, if PREPA can demonstrate that any of its submissions are not exempted from the Trade Secret designation by 22 L.P.R.A. § 1051b, then PREPA must still provide each document to the Energy Bureau, along with all supporting justification and documentation required by the August 2016 Order. With these justifications in hand, the Energy Bureau should then solicit public comment on such Trade Secret claims before making a ruling on whether to grant each specific piece of information Trade Secret protection.

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<sup>48</sup> 22 L.P.R.A. § 193(a) (creating PREPA and designating it a “public organization and governmental instrumentality of the Commonwealth of Puerto Rico”).

<sup>49</sup> *See* Resolution on Confidentiality at 1–2, Aug. 31, 2016, No. CEPR-MI-206-0009.

### III. PETITION TO INTERVENE

The Petitioners now respectfully seek leave of the Energy Bureau to intervene in this Request For Proposals proceeding.

The Petitioners comprise the following eleven groups, the missions and membership of which will be substantially affected by the resources that are ultimately procured as a result of the instant proceeding:

1. Comité Diálogo Ambiental, Inc. (“CDA”) is a community environmental group composed of residents of the Municipality of Salinas and the Guayama Region.<sup>50</sup> CDA promotes the general welfare of the communities it serves through education and citizen capacity building, focused on the adverse impacts of human activities on the ecologic balance of natural systems and the importance of restoring the environment. CDA works to promote conditions under which humans and the environment can exist in harmony to fulfill the economic, social, and other needs of present and future generations. The Energy Bureau granted CDA’s Petition to Intervene in various dockets, including the last two Integrated Resource Planning proceeding. Energy Bureau Dockets CEPR-AP-2015-0002 and CEPR-AP-2018-0001.
2. El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática (“El Puente – ELAC”) is a group whose members are Puerto Rico residents

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<sup>50</sup> Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 1997.

concerned about the impacts of climate change on the Island.<sup>51</sup> El Puente - ELAC promotes multisector discussion on the predictable effects of climate change in Puerto Rico; disseminates studies and information on climate change scenarios; generates discussion of mitigation and adaptation alternatives and their viability for Puerto Rico, and determines optimal parameters for planning for climate change, sea level rise, food security, water availability, and the impacts of power generation on climate change. The Energy Bureau granted El Puente – ELAC’s Petition to Intervene in various dockets, including the last two Integrated Resource Planning proceeding. Energy Bureau Dockets CEPR-AP-2015-0002 and CEPR-AP-2018-0001.

3. Comité Yabucoeño Pro-Calidad de Vida, Inc. (“YUCAE”) is a non-profit community-based group that ensures Yabucoa residents enjoy a sustainable development where economic development, social equity and the conservation of ecosystems are integrated.<sup>52</sup> YUCAE’s view is to achieve an effective commitment of diverse civic groups, religious and educational institutions, whose active participation promotes the empowerment of the community, and the search for solutions to the main environmental, economic and social problems faced by Yabucoa’s communities.

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<sup>51</sup> Organized as a nonprofit corporation since 1982 and authorized under the laws of the Commonwealth of Puerto Rico since 2015.

<sup>52</sup> Created in 1988 and organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 1989.

4. Alianza Comunitaria Ambientalista del Sureste, Inc. (“ACASE”) is a non-profit environmental organization whose members are from Humacao, Yabucoa, Las Piedras, Caguas, and Patillas. ACASE was created in response to the disposal of coal ash in the Humacao landfill.<sup>53</sup> ACASE raises awareness in the communities of Humacao and neighboring towns of the health impacts from coal combustion and coal ash. ACASE also offers talks and conferences on renewable energy, seed harvesting, and the public debt of Puerto Rico.
5. Sierra Club Puerto Rico, Inc. (“Sierra Club PR”) is the local chapter of the biggest, oldest, and most influential environmental organization in the United States. Founded in 1892, the Sierra Club has more than three million members and followers, all inspired by the marvels of nature. Sierra Club’s mission is to explore, enjoy, and protect natural treasures. Sierra Club’s Puerto Rico chapter was founded in 2005. Since its beginning, the chapter has collaborated with different communities and community-based organizations to protect natural areas, promote public policies that protect the public health and environment, mobilize communities to resist pollution projects such as a proposed methane gas pipeline and waste incinerators, among other victories. After Hurricane Maria, the chapter has been helping develop sustainable and self-sufficient projects in communities around the island.

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<sup>53</sup> Created in 2015 and organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2019.

6. Mayagüezanos por la Salud y el Ambiente, Inc. (“MSA”) is a community and environmental organization. MSA’s volunteers offer educational, organizational, research and participatory services aimed at the defense and protection of natural resources, mainly in the western area of Puerto Rico.<sup>54</sup> MSA is the co-manager of the Caño Boquilla Natural Reserve. MSA focuses on the Reserve, renewable energy, and the quality and protection of coastal waters and the rivers that nourish them.
7. Coalición de Organizaciones Anti Incineración, Inc. (“COAI”) is a coalition of citizens and more than 35 organizations concerned about waste incinerators in Puerto Rico, especially the solid waste incinerator proposed by Energy Answer-Arecibo, LLC, in Arecibo.<sup>55</sup> COAI promotes clean energy and opposes the generation of energy with incineration.
8. Amigos del Río Guaynabo, Inc. (“ARG”) is an environmental and community organization created for the defense of the natural resources of Puerto Rico, especially water resources.<sup>56</sup>
9. Campamento Contra las Cenizas en Peñuelas, Inc. is a community and environmental non-profit organization dedicated to the fight against combustion residue from fossil fuel energy generation, especially the deposit of toxic coal ash from the AES coal plant in Guayama. Its mission

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<sup>54</sup> Established in 1989 and organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 1990.

<sup>55</sup> Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2017.

<sup>56</sup> Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2004.

- is to raise community awareness about the dangers from toxic col ash and the urgency of ending coal combustion in Puerto Rico as soon as possible.
10. CAMBIO PR, Inc. (“CAMBIO”) provides services to the community, promotes and conducts research, and implements strategies on energy and other sustainability issues. CAMBIO contributes to the construction of a fairer society that has greater opportunities, capacities and resources.
11. The Unión de Trabajadores de la Industria Eléctrica y Riego, (“UTIER” or the Union), is the largest of the four labor unions that represent the Puerto Rico Electric Power Authority (“PREPA”) workers. UTIER is represented in this proceeding by its president, Angel R. Figueroa Jaramillo. The fundamental objective of UTIER is to integrate the active and retired workers of the Puerto Rico Electric Power Authority into the same body; promote the incorporation into the Union of new bonafide members from other instrumentalities of the Commonwealth and other workers from private companies, municipalities and government agencies, and promote the organization, solidarity and unity of the labor and working class. The Union opposes the RFP for temporary emergency generation for multiple reasons that include the huge expenditure of public funds entailed; the fact that there is no guarantee that the funds expended for the temporary emergency generation will be reimbursed to PREPA; the belief that the Costa Sur plant can be repaired and placed into operation for a fraction of the cost of the temporary emergency generation.



These organizations are active stakeholders on energy issues in Puerto Rico. Their members are concerned citizens that promote the development of renewable energy in Puerto Rico, and are impacted by pollution from fossil fuel power plants in Puerto Rico. Their members are also customers of PREPA, subject to PREPA's billing for electric power service. For all of these reasons, these organizations and their members will be substantially affected by the economic, social, and environmental consequences of this Request For Proposals.

The majority of the Petitioners' members are laypersons that strongly prefer to read in Spanish. Therefore, the Petitioners will make every effort to provide summaries, in Spanish of the core concepts of their presentations to nontechnical audiences, using visual elements where appropriate.

**IV. ARGUMENT: The Petition to Intervene complies with all applicable requirements and should be granted.**

Puerto Rico law emphasizes “[t]ransparency and citizen participation in every process related to electric power service”. 22 L.P.R.A. §§ 1051(o), 1051a(hh). Consistent with the stated importance of public involvement, Puerto Rico law directs agencies to construe this statute “liberally” in order to “facilitate” public participation. 3 L.P.R.A. § 9645; *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1011 (2008) (“Agencies are obliged to facilitate the participation of such citizens whose interests may be affected by the administrative action, to avoid applying [agency] expertise to information that does not reflect the real situation of

said citizens.”) (translated from the original Spanish). The Petitioners meet the substantive and procedural requirements for intervention, especially considering the mandate on agencies to facilitate public participation; therefore, this Honorable Bureau must grant the Petition to Intervene.

**A. Petitioners have legitimate interest in this proceeding that would allow PREPA to move forward with the Request for Proposals process.**

Any person with a “legitimate interest in an adjudicatory procedure before an agency” may seek to intervene in that proceeding through a “duly grounded application” to that agency. 3 L.P.R.A. § 9645. The Puerto Rico Supreme Court has determined that a “legitimate interest” in an administrative proceeding embraces a “wide spectrum of possibilities” including “environmental, social, and economic interests.” *San Antonio Maritime v. P.R. Cement Co.*, 153 D.P.R. 374, 392-393 (2001) (translated from the original Spanish).

The Petitioners have several legitimate environmental, social, and economic interests in the resources to be procured through this Request For Proposals. First, the Petitioners and their members have a significant interest in ensuring that PREPA provides safe, affordable, and disaster-resilient power to the people of Puerto Rico, as required by Law 57-2014 and Law 17-2019. Second, many of Petitioners’ members likely live and work close to the proposed fossil fuel plants and infrastructure. These members will be exposed to contaminants from fossil fuel combustion. Finally, the Petitioners have an interest in the wider impacts on emissions of disaster-intensifying greenhouse gases and the pollution of Puerto Rico’s air, soil, and water. These environmental impacts will be imposed on the citizens of

Puerto Rico for generations. The legitimate interests of Petitioners and their members merit full intervention in this proceeding.

**B. The Petitioners meet all seven factors for intervention.**

Where a party seeking intervention has demonstrated a legitimate interest, Act 38-2017 identifies seven factors the agency must consider when evaluating whether to grant a petition for intervention, including:

- (a) Whether the petitioner's interests may be adversely affected by the adjudicatory procedure.
- (b) Whether there are no other legal means for the petitioner to adequately protect his interests.
- (c) Whether the petitioner's interests are already adequately represented by the parties to the procedure.
- (d) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the procedure.
- (e) Whether the petitioner's participation may extend or delay the procedure excessively.
- (f) Whether the petitioner represents or is the spokesperson of other groups or entities in the community. [and]
- (g) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure.

3 L.P.R.A. § 9645. Act 38-2017 further directs the agency to “apply the above criteria liberally” when making its determination. *Id.* The Puerto Rico Supreme Court has held that this statute “obligate[s] [agencies] to facilitate the participation of such citizens whose interests may be affected by administrative action.” *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1011 (2008) (translated from the original Spanish).

The factors for evaluating petitions for intervention in an adjudicative proceeding strongly support granting the petition, particularly considering the

legislative, judicial, and regulatory mandates under Puerto Rico law to ensure public involvement in this proceeding.

- i. Petitioners' interests will be adversely affected by the PREB's authorization of the Process of Request for Proposals for Temporary Emergency Generation.*

Petitioners represent Puerto Rican citizens and communities who will be subject to the full weight of the environmental, social, and economic consequences of the resourced to be procured as a result of this proceeding. Any outcome which does not address the Petitioners' interests, testimony and arguments will have a harmful economic and environmental impact on the Petitioners, and on Puerto Rico.

- ii. There are no other legal means for the Petitioners to adequately protect their interests.*

Petitioners have no other legal means to fully protect their interests in the resources to be procured through the RFP authorized in this proceeding, including through the ability to sponsor expert testimony, propound discovery, and cross examine PREPA's witnesses, to ensure that these resources adequately protect the interests of their organizations and membership. Participating in this proceeding is the best means for Petitioners to protect their interests in assuring that resources ultimately selected in the RFP process are consistent with transformation to an affordable, disaster-resilient grid powered entirely by renewable energy. This transition is necessary to achieve energy independence, and is required by Law 17-2019.

- iii. The Petitioners interests are not already adequately represented by the parties to this proceeding.*

Petitioners have longstanding and unique interests on several relevant issues in this proceeding. Those interests are not adequately represented by any other party to this proceeding. The Petitioners are also advocating for these interests in several other ongoing proceedings in Puerto Rico. For example, the Integrated Resource Plan proceeding, the PROMESA proceeding to resolve PREPA's debts,<sup>57</sup> and the Environmental Quality Board proceeding to consider renewal of the Clean Air Act Title V permit for the Aguirre Power Station.<sup>58</sup>

*iv. The Petitioners' participation is reasonably likely to help prepare a more complete record in this proceeding.*

Because Petitioners speak for numerous community and citizen groups, their full participation as intervenors will lead to a significantly better representation of public input in the final record. By providing an independent analysis, Petitioners will enrich the record and enhance this Bureau's capacity to approve an RFP process that fully complies with the policies of Laws 57-2014, 38-2017, and 17-2019, and the public interest.

*v. The Petitioners' participation will not excessively extend or delay the proceeding.*

Petitioners have legal representation, are organized, and are prepared to proceed in compliance with all schedules and rulings made by the Energy Bureau. Petitioners will work with all parties to ensure an efficient process, and avoid duplicate of efforts, confusion or any delays.

*vi. The Petitioners represent other groups or entities in the community.*

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<sup>57</sup> *Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R. 2017).

<sup>58</sup> Docket PFE-TV-4911-63-0212-0244.

Petitioners represent a broad coalition of citizens, labor groups, and communities spanning Puerto Rico and are firmly committed to protecting the interests of the general public in this proceeding.

- vii. The Petitioners can contribute information, expertise, specialized knowledge and technical advice which is otherwise not available in the procedure.*

Petitioners have been actively involved in energy and environmental issues in Puerto Rico for years, if not decades. Many of Petitioners' members live close to Puerto Rico's existing fossil fuel plants and infrastructure, and therefore can provide the Bureau with first-hand descriptions of the impacts of these plants. Petitioners will contribute information, expertise, knowledge and advice essential for the Bureau to determine whether the RFP will procure the best and most resilient resources.

Taken together, these seven factors strongly support intervention by the Petitioners.

**C. The Petitioners' Motion is timely.**

The Energy Bureau filed its order on March 3<sup>rd</sup>. Law 38-2017, Section 3.15 allows entities twenty days to file a motion requesting that the Energy Bureau reconsider the order; that would put the deadline at March 23<sup>rd</sup>. On March 16<sup>th</sup>, the Energy Bureau issued an Order tolling all deadlines to March 31<sup>st</sup>. In sum, this motion was filed within the tolled deadline of March 31<sup>st</sup>.

## CONCLUSION

For the foregoing reasons, the Energy Bureau should halt the Request For Proposal (RFP) process to re-examine critical questions, with input from UTIER, local environmental organizations, and the public at large. The Energy Bureau should also order PREPA to make the Request For Proposals publicly available. Finally, the Energy Bureau should permit intervention into this proceeding, in order to provide input on these critical issues. Petitioners suggest a telephone conference among all parties to discuss these matters.

**RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of March, 2020, in San Juan, Puerto Rico

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## CERTIFICATE OF SERVICE

I hereby certify that on March 25, 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 March 25, 2020.

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