

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

NEPR

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IN RE:

IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT:

Draft Procurement Plan – Request for Temporary Confidential Designation and Treatment of Preferred Interconnection Location Information

**MOTION FOR RECONSIDERATION AND MODIFICATION OF JANUARY 7, 2021
RESOLUTION ON REQUEST FOR CONFIDENTIAL DESIGNATION
AND TREATMENT OF IDENTIFYING PREFERRED
LOCATIONS FOR INTERCONNECTION**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully submits and requests as follows:

I. INTRODUCTION

The Energy Bureau’s *Resolution and Order* entered in the captioned case on January 7, 2021 (the “January 7 *Resolution*”) requires PREPA to submit by today redacted/public versions of all of the Appendices which PREPA submitted with its December 22, 2020 *Motion in Compliance with Order Submitting Final Procurement Plan and Associated Request for Proposals* (“December 22 *Motion in Compliance*”).¹ Among those Appendices are four which include detailed information identifying preferred locations for the interconnection of renewable and battery energy

¹ The December 22 *Motion in Compliance* was submitted in response to a December 8, 2020 *Resolution and Order* issued in the captioned proceeding in which the Energy Bureau required that PREPA revise its Draft Procurement Plan in a number of respects and file a Final Procurement Plan, along with responses to a number of technical questions, by December 22, 2020. *Resolution and Order*, Case No. NEPR-MI-2020-0012 (Dec. 8, 2020) (“December 8 *Resolution and Order*”) at 12.

storage resources to the PREPA grid.² Because these Appendices contain confidential information, including Critical Energy Infrastructure Information (“CEII”), by *Request for Confidential Designation and Supporting Memorandum of Law* filed on December 23, 2020 (the “December 23 Request”), PREPA requested that the Energy Bureau find that the Appendices to the December 22 Motion in Compliance are confidential and that it order that they remain under seal. In its January 7 *Resolution*, the Energy Bureau granted this request in part, but directed PREPA “[i]n the case of documents containing CEII information such as coordinates and/or map locations,” to “provide a list of municipalities where the preferred sites are located and the number of sites per municipality.”³

Through this motion, PREPA asks the Energy Bureau to reconsider its determination that PREPA must publicly file *at this time* information identifying locations of preferred sites for the interconnection of renewable and battery energy storage resources.⁴ PREPA does not dispute the importance and value of this information to stakeholders, including potential proponents of renewable and energy storage projects; indeed it is because this information has unique value that PREPA asks the Energy Bureau to permit it to defer the public disclosure of this information for

² These include:

- 03 RE RFP_Appendix_J_Preferred Location of Energy Resources;
- 04 SL Renewable Energy Integration Study of Puerto Rico 22Dec2020;
- 05 Utility Scale Interconnections Preferred Locations; and
- 06 Utility Scale RE and BESS Preferential Locations Maps.

³ January 7 *Resolution*, Case No. NEPR-MI-2020-0012 at 3.

⁴ In making this request, PREPA acknowledges the Energy Bureau’s recent determination that, because this proceeding is not adjudicative in nature, the request for reconsideration process provided in Section 3.15 of Act 38-2017 is not available. Ruling on Motion titled *Motion for Reconsideration of the Resolution and Order on the Evaluation of Puerto Rico Electric Power Authority’s Draft Procurement Plan, In re: The Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, Case No. NEPR-MI-2020-0012 (Jan. 5, 2020) (“January 5 Resolution and Order”) at pp. 2-3. It is, nevertheless, within the Energy Bureau’s inherent discretion in managing its proceedings to consider a request that it reconsider and modify aspects of its rulings. The Energy Bureau recognized as much in “deem[ing it] proper to provide some sort of relief regarding PREPA’s December 22, 2020 Motion.” January 5 Resolution and Order at p. 3. PREPA submits that, as it found it proper to grant relief in the nature of reconsideration in the January 5 Resolution and Order, it would be appropriate for the Energy Bureau to provide the relief PREPA requests in this Motion.

the time being. In so doing the Energy Bureau will reduce the prospects that premature disclosure of competitively sensitive information could significantly increase the cost of the resources PREPA has been directed to procure. Consequently, deferring the required public filing of this information will be consistent with the provisions of Act 57-2014, which “require[] the Energy Bureau to protect confidential information in a manner that least affects the public interest, transparency, and the rights of the parties involved in the instant case.”⁵

II. PROCEDURAL BACKGROUND

In its December 8 *Resolution and Order*, the Energy Bureau directed PREPA to file a Final Procurement Plan and responses to certain technical questions by December 22, 2020.⁶ PREPA made the filings as required on December 22, 2020, and on the next day filed a request that the Energy Bureau designate and treat as confidential the documents that were attached to the December 22 Motion in Compliance. In that request, PREPA noted that the Appendices to the December 22 Motion in Compliance “contain information that qualifies as proprietary and contains trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico Law.”⁷ PREPA observed that Regulation 8543 specifically provides for the designation of such information as confidential⁸ and that the information included in the Appendices, “if publicly disclosed now, will provide a competitive advantage to some parties, which will disrupt the competitive process and therefore, affect the Authority and the customers.”⁹

⁵ *Id.* at 3.

⁶ December 8 *Resolution and Order*, at 12.

⁷ December 23 Request at 2-3 (citing *Industrial and Trade Secret Protection Act of Puerto Rico*, as amended, Act No. 80-2011 and Act No. 57-2014, Art. 6.15.

⁸ December 23 Request at 3, citing Regulation 8543, Sec. 1.15 and *Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority*, Regulation 9021, Sec. 1.15.

⁹ December 23 Request at 3.

In its January 7 *Resolution*, the Energy Bureau has generally accepted PREPA's characterization of the commercial and technical sensitivity and confidential nature of the information included in the Appendices filed with the December 22 Motion in Compliance. PREPA is today filing redacted versions of these Appendices, including redacted versions of the RFP and all of its attachments. PREPA believes that it has complied with the requirement that it ensure that its redactions are "limited and restricted to those items of information or images that explicitly and clearly divulge CEII information, as the January 7 Resolution requires."¹⁰

PREPA's concern is focused not on the requirement that it submit these redacted documents, but rather with the requirement that it simultaneously provide a list of municipalities where preferred sites for interconnection are located, as well as the number of sites per municipality.¹¹ As discussed below, PREPA is concerned that the Energy Bureau has inadvertently created a situation in which submission and the resultant public disclosure of preferred interconnection location information at this time will adversely affect the public interest, contrary to the provisions of Act 57-2014. Disclosure of this detailed information now could enable prospective project proponents and real estate speculators to position themselves *vis a vis* preferred interconnection locations in a way that could adversely affect competition and could increase the prices PREPA and, therefore, Puerto Rico consumers, will be required to pay for renewable resources.

III. ARGUMENT

PREPA's renewable and battery energy storage resource procurement process is designed to be competitive and to yield prices that are disciplined by competition. If all goes

¹⁰ January 7 *Resolution* at 3.

¹¹ *Id.*

as planned, PREPA will soon issue its Tranche 1 Request for Proposals along the lines of the one submitted with the December 22 Motion in Compliance. PREPA's hope and expectation is that multiple proponents of renewable energy and battery energy storage resources will respond with project proposals from which PREPA will be able to choose those technically feasible projects offering the most advantageous pricing, the greatest benefits to the PREPA system and the best prospects of being financed and constructed. Ideally, project proponents will compete in substantial part on the basis of price, with the result that the cost to PREPA of procuring new renewable and energy storage resources will be minimized. Project proponents can be expected to seek out those locations at which siting a renewable or storage resource is likely to require the fewest and least costly interconnecting facilities and system upgrades. Those proponents that can secure project development sites at such preferred locations will have a significant competitive advantage in the RFP process and should be able to offer lower prices than proponents offering projects that will interconnect at other, less advantageous, locations.

By directing PREPA to file publicly, at this time, a list of municipalities where preferred sites for interconnection are located, specifying the number of such sites per municipality, the Energy Bureau may inadvertently impede achievement of the goal of minimizing the cost of renewable and energy storage resources bid into PREPA's Tranche 1 RFP. With the information the Energy Bureau has directed PREPA to make public, prospective developers will be able to identify immediately, before the upcoming RFP is even issued, the locations at which interconnection is likely to be most advantageous. Interest in these locations can be expected to lead to bidding wars for sites in their vicinity, with the cost of securing rights to such sites being bid up, perhaps substantially. Real estate speculators may attempt to obtain sites for the purpose

of profiting by flipping them to bona fide energy project developers. Either way, entities that obtain exclusive rights to sites at the preferred locations will gain an immediate competitive advantage, and will be able to position themselves to foreclose competitors or to increase the costs bona fide developers must incur to gain access to the sites. This is not a purely hypothetical concern: PREPA advisors have observed this behavior and attendant cost increases in other jurisdictions in which renewable resource procurement processes have identified preferred interconnection locations.

PREPA acknowledges that it will be in the interest of all stakeholders for information regarding preferred locations for new resource interconnections to be made available so that proponents can seek sites at which projects might be developed most economically. But *now*, before the Tranche 1 RFP and related documents have been approved by the Energy Bureau and can be issued to the public through an orderly process, is simply not the right time. PREPA submits that the public interest would best be served if the Energy Bureau were to modify the directive set forth in the January 7 *Resolution* that it file a list of municipalities where preferred sites for interconnection are located, as well as the number of sites per municipality. Rather than require this information to be made public now, the Energy Bureau should authorize and direct PREPA to submit the referenced location information to the Energy Bureau for public disclosure at the same time as it releases its Tranche 1 RFP to the public through PowerAdvocate®. This approach would minimize the possibility that prospective developers and land speculators will be able to secure rights to sites at preferred locations in a manner than can be expected to drive up costs, and therefore to drive up the prices project proponents will bid and Puerto Rico electricity consumers will ultimately have to bear.

IV. CONCLUSION

PREPA appreciates the importance of making available to prospective renewable and energy storage project developers information concerning preferred interconnection locations. At the same time, PREPA believes that it is important that the eventual costs of renewable resources not be unnecessarily inflated by speculative activity, potential bidding wars and anticompetitive activity. In PREPA's view, disclosing a list of municipalities containing preferred locations for potential interconnections at this time, before the Tranche 1 RFP has been approved and published, creates a risk that can be minimized simply by deferring the required public disclosure of this information until the RFP is actually issued.

WHEREFORE, PREPA respectfully requests the Energy Bureau to reconsider its January 7 Resolution and modify it to allow PREPA to defer the filing of a list of municipalities where preferred sites or interconnection are located, as well as the number of sites per Municipality, until the date on which PREPA releases the Tranche 1 RFP to the public and prospective bidders through PowerAdvocate©.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 11th day of January 2021.

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