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

IN RE: REVIEW OF THE PUERTO RICO ELECTRIC POWER AUTHORITY'S 10-YEAR INFRASTRUCTURE PLAN – DECEMBER 2020	**CASE NO.:** NEPR-MI-2021-0002 **SUBJECT:** PREPA'S 10-YEAR INFRASTRUCTURE PLAN

OPPOSITION TO PREPA'S MOTION SEEKING PREB APPROVAL OF 10-YEAR INFRASTRUCTURE PLAN

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., and CAMBIO Puerto Rico, Inc., ("Local Environmental Organizations"), to request that PREB reject PREPA's 10-Year Infrastructure Plan.

Argument

In August 2020, the Puerto Rico Energy Bureau set forth a thoroughly detailed Integrated Resource Plan to transform Puerto Rico's energy grid. PREPA chose not to seek reconsideration or appeal of any provisions of the Integrated Resource Plan. Instead, PREPA had its consultants create a secret new plan to submit to FEMA, with many points at odds with the approved IRP and with Puerto Rico law. When PREPA finally made PREB privy to the 10-Year Infrastructure Plan in December 2020, the Energy Bureau immediately recognized it as a collateral attack on the portions of the approved Integrated Resource Plan that PREPA's fossil fuel-biased consultants did not like. The cosmetic changes in the "Revised 10-Year Plan" do not change the fundamental nature of the plan. PREB should therefore reject the plan and reiterate the requirements of the approved Integrated Resource Plan. PREB should also inquire into the costs of creating the 10-Year Plan; neither Puerto Rico ratepayers nor federal taxpayers should be made to pay the consultants' fees for preparing this irrelevant document.

PREPA claims that FEMA required the 10-Year Infrastructure Plan, but provides no citation for any supporting law or rule that requires such a plan.[1] If FEMA did ask for a long-term plan, then the first thing PREPA should have done was to provide the approved Integrated Resource Plan. PREPA's consultants do not seem to understand or respect the work that the utility, the regulator, stakeholders,

[1] PREPA Response to Resolution and Order Entered on January 25, 2021 and Request For Approval of Revised 10-Year Infrastructure Plan at 16-17, PREB Dkt. No. NEPR-2021-MI-0002 (Feb. 16, 2021) [Hereinafter "PREPA Motion"].

and the public put into the three-year Integrated Resource Planning process, to create the least-cost, least-risk plan to achieve the island's energy goals. This plan includes a detailed timeline and a lengthy description of the actions that PREPA will take over the next five years, as well as forecasts and planned actions over a fifteen-year timeframe, to achieve the island's energy goals. This detailed document should satisfy any FEMA requirement for a long-term Plan.

In fact, providing the approved Integrated Resource Plan to FEMA is a prerequisite to actually obtaining FEMA funding, because federal law prohibits FEMA from funding any project that is inconsistent with the approved Integrated Resource Plan. Under Act 17-2019 and Act 57-2014, PREB decides what projects and expenditures PREPA may move forward with, in the best interests of the people of Puerto Rico, through the Integrated Resource Planning process. Those laws also require PREPA to conform its activities to the approved Integrated Resource Plan. The approved Integrated Resource Plan is a policy and procedure that applies uniformly to PREPA's activities, and therefore projects must be consistent with the approved IRP to be eligible for Federal awards. 2 CFR 200.403(c).[2]

[2] *See also* 2 CFR § 200.318(a), requiring PREPA to "use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward."

I. PREPA's current FEMA funding request does not include a single dollar towards renewables or storage, which all parties agree must be PREPA's main priority. PREB should require PREPA to amend its FEMA funding request to include major investments into renewables and storage.

PREPA's own proposed Integrated Resource Plan, issued in August 2019, acknowledged "[t]he urgency of adding as much PV as practical" and the need to provide distributed power … as soon as possible…"[3] PREB's approved Integrated Resource Plan also prioritized procurement of renewables and storage, and PREB has since stated that the very first item on PREPA's priority list must be enabling existing distributed storage resources either through a rapid timeline for interconnection, or through a demand response program.[4] It is absurd that PREPA did not ask for as single dollar towards these priorities in its FEMA funding request. Experts have called the existing distributed rooftop solar + storage systems on the island "the biggest untapped Virtual Power Plant resource in the world"; FEMA funding to tap this resource would be far more effective than any of the projects that PREPA seeks FEMA funding for.[5]

PREPA's refusal to seek FEMA funds for renewables and storage hinges on an incorrect interpretation of the approved Integrated Resource Plan: "Neither the 10-Year Plan, nor the Revised 10-Year Plan, provide for investment to acquire new

[3] Puerto Rico Electric Power Authority, Integrated Resource Plan 2018-2019 With Errata, Rev. 2.1, at Section 10.1.1, PREB Dkt. No. CEPR-AP-2018-0001 (June 7, 2019) [Hereinafter "PREPA IRP"].
[4] PREB Resolution and Order at 7 & Appendix A at 2-3, PREB Dkt. No. NEPR-MI-2020-0012 (Dec. 8, 2020).
[5] Negociado de Energía en vivo, Evidentiary Hearing / CEPR-AP-2018-0001, YouTube (Feb. 7, 2020), https://youtu.be/zkGmgsj6OTs?t=13114.

renewable resources and battery energy storage resources because PREPA, **in accordance with the Final IRP Order**, will not make capital investments to acquire new renewable resources and battery energy resources."[6]

Nowhere does the Order, or any Puerto Rico law, prohibit PREPA from making capital investments to acquire new renewable resources and battery energy resources. In fact the approved Integrated Resource Plan **requires** PREPA to "quickly pursue VPP approaches to capture the grid value of distributed resources through RFPs, tariffs, rates, and/or direct utility programs."[7] Direct utility programs clearly includes direct acquisition of new renewables. Law 83-1941 Sections 5 (h) and (k) give PREPA the power to acquire and use any enterprise (or "empresa") which, as defined in Section 2 of that law, includes community solar systems and rooftop solar + storage systems. PREPA cannot seriously claim that any law or policy prevents utility ownership of new power generation, when in the next breath PREPA's consultants ask FEMA to spend hundreds of millions of dollars on a PREPA-owned gas plant and 330 MW of PREPA-owned gas peakers.

Nor would any federal law or regulation prohibit FEMA from providing funding for renewable projects. On February 25, 2021, seventeen members of Congress sent a letter to FEMA noting that distributed renewables and storage would indeed be eligible for FEMA funding. These Members of Congress urged FEMA to scrap the current PREPA request, embodied by the 10-Year Infrastructure Plan, and

[6] PREPA Motion at 22(emphasis added).
[7] PREB, Final Resolution and Order on the Puerto Rico Electric Authority's Integrated Resource Plan at paras. 52, 496, PREB Dkt. No. CEPR-AP-2018-0001 (Aug. 24, 2020) [Hereinafter "Final IRP Order"].

embrace a grid powered by distributed renewables & storage, as envisioned by the approved Integrated Resource Plan. The correspondence between Congress and FEMA completely debunks PREPA's claims that federal law prohibits FEMA from funding renewable projects.[8] Other Puerto Rico agencies, like the Departamento de la Vivienda, have already embraced the possibility of federal funding for distributed renewables & storage.[9] FEMA itself has pointed out that "Department of Housing and Urban Development (HUD) Community Block Development Grants (CDBG) funding is currently being explored as an option for some grid transformation projects to include renewable integration, energy efficiency programs and distributive energy operational platforms at the utility and customer level…"[10] It is past time for PREPA to follow suit and add distributed renewable + storage projects to its FEMA funding request; PREB should reject any plan that fails to do so.

PREB should therefore require PREPA to abandon its narrow focus on "renewable energy projects of private (investor-owned) partners, like energy sellers with PPOAs,"[11] instead amend its FEMA funding request to include funding for renewables and storage owned by PREPA itself. PREB's consultant, Robert Fagan, proposed this at the February 24th PREB technical conference, specifically with respect to utility-owned rooftop solar + storage systems: "The stakeholders have put

[8] *See* Letter from Sen. Schumer and Rep. Velasquez to FEMA (Nov. 17, 2020); Letter from FEMA to Sen. Schumer (Feb. 8, 2021); & Letter from Sen. Schumer and Reps. Velazquez and Ocasio-Cortez to FEMA (Feb. 25, 2021). A true and accurate copy of each letter is attached to this filing.
[9] CDBG-DR-IFB-2021-01 PV Systems and Water Storage System Acquisition and Installation Services, https://cdbg-dr.pr.gov/app/cdbgdrpublic/Auction/SeeMore/306?redirect=true.
[10] *See* Letter from José G. Baquero, FEMA Federal Disaster Recovery Coordinator, to Earthjustice (Sept. 24, 2020). A true and accurate copy of the letter is attached to this filing.
[11] PREPA Motion at 23.

forward the notion that there can be extensive DER installations, be they stand alone or microgrid, throughout the island, for resiliency purposes. They would also have blue sky benefits clearly."[12] Mr. Fagan explained that rental agreements between the utility and homeowners, widely in use in other jurisdictions, would make these arrangements feasible.[13]

Finally, PREPA claims that the utility cannot identify any renewable or storage projects to fund right now, asserting that it "has not listed in the 10-Year Plan, specific projects that will support the integration of renewables because it's not feasible at this time."[14] This is incorrect: PREB, stakeholders, and PREPA itself have all identified numerous clean energy projects that warrant FEMA funding. Here are just a few examples:

- PREB has required PREPA to enable existing distributed storage resources either through a rapid timeline for interconnection, or through a demand response program.
- PREPA has identified 47 sites around the island that are well-suited for interconnection of renewables and storage.[15] FEMA can immediately fund rooftop solar + storage systems close to these interconnection points.
- Over the last year, PREPA's workers have significantly improved interconnection times for new rooftop solar + storage systems.[16] With FEMA funding support, PREPA's workers could improve interconnections even more. PREPA should consider supporting these workers instead of planning layoffs and privatizations.

[12] https://youtu.be/lYG9XBIiOaE?t=7963.
[13] https://youtu.be/oGYujWJ8S7s?t=6719.
[14] PREPA Motion at 22.
[15] PREPA Motion in Compliance with Order Submitting Preferred Interconnections Map, PREB Dkt. No. NEPR-MI-2020-0012 (Jan. 13, 2021).
[16] *See, e.g.,* PREPA Moción Para Presentar el Informe de Progresso de Interconección at 2-3 (Feb. 16, 2021) and PREPA Moción Sometiendo Informe de Progresso de Interconección at 2-3 (Nov. 15, 2019), PREB Docket NEPR-MI-2019-0016.

- PREB has ordered PREPA to conduct an aggressive and expeditious process to establish at least 250 MW of demand response programs with its industrial and commercial clients. PREB made it clear that this was to include both customer self-generation as well as customer load reduction. PREPA has begun work on the customer self-generation aspect, and reports that 34 customers have a total of 171 MW of self-generation equipment in service or under evaluation. PREPA recommends establishing a program to establish direct client relationships and notify customers when demand reduction is necessary, and to establish guidelines on how demand response will work. PREPA notes that the customers would expect an incentive. PREPA finally notes other jurisdictions have successfully implemented time-of-use pricing, critical peak pricing, variable peak pricing, real time pricing, and critical peak rebates.[17]
- Quick-start Energy Efficiency Programs like solar water heaters and appliance replacement incentives, which all parties agree would be cost-effective.

For all the reasons detailed above, PREB should reject PREPA's refusal to ask for a single dollar of FEMA funding towards clean energy, and direct PREPA to amend its funding request to include the renewable and storage projects that all parties, including PREPA, acknowledge are the main priority right now.

PREPA's refusal to ask for federal funding for clean energy projects stands at odds with the Biden Administration's Executive Order, 'Tackling the Climate Crisis at Home and Abroad:"

> To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well paying union jobs, turning disadvantaged communities — historically marginalized and overburdened — into healthy, thriving communities, and undertaking robust actions to

[17] PREPA Motion to Submit Demand Response Status Report, PREB Dkt. No. CEPR-AP-2018-0001 (Dec. 30, 2020).

> mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas."[18]

The funds present a once-in-a-lifetime opportunity to address electric system vulnerability with onsite/rooftop solar plus storage and provide a lifeline to Puerto Rico residents. Earmarking federal funds for the localized solar + storage through the public utility to carry out a transparent procedure for large scale deployment of rooftop solar + storage serves three paramount purposes:

1) providing access to energy resiliency to all ratepayers, including the lowest income sectors of the population who would otherwise not be able to access loans, rebates or leases for solar + storage;
2) providing a uniform procedure through the public utility that would hasten the implementation of rooftop or onsite solar and storage installations; and
3) breaking the disaster cycle of repeated destruction and costly reconstruction of the vulnerable, long-distance transmission system that so often interrupts life-saving electric service.

[18] Exec. Order No. 14,008, 86 FR 7619 (Jan. 27, 2021), https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad.

II. Several studies confirm that distributed solar + storage systems are the most affordable and resilient option for the island's grid, and confirm PREB's decision to prioritize these resources in the Approved Integrated Resource Plan. FEMA's funding priorities should mirror those in the Approved IRP.

More than a decade ago, the Puerto Rico Energy Affairs Administration ("AAE") commissioned studies by faculty at the University of Puerto Rico at Mayagüez ("UPRM"), which culminated in the recommendation for widespread use of existing structures as the "roof resource" site photovoltaic / solar equipment.[19] Solar systems along with energy storage systems or batteries at or near the place of consumption provide the resilient supply of electrical energy and serve as a first line of defense for residents and businesses.

The National Renewable Energy Laboratory ("NREL") published the new estimates for Puerto Rico at the census zone level of the technical potential of photovoltaic systems on rooftops of low to moderate income residences ("LMI"), as well as the potential for savings in the solar electricity bill for LMI communities at the municipal level.[20] NREL has determined, among other things, that Puerto Rico's annual residential solar potential is 24.6 TWh. This is approximately four times the annual residential electricity consumption. Almost half of that, 11.87 TWh,

[19] *See* Agustin Irizarry-Rivera et al, Achievable Renewable Energy Targets ("ARET") For Puerto Rico's Renewable Energy Portfolio Standard, http://uprm.edu/aret/.
[20] National Renewable Energy Laboratory (NREL), Puerto Rico Low-to-Moderate Income Rooftop PV and Solar Savings Potential (Dec. 17, 2020), https://www.nrel.gov/docs/fy21osti/78756.pdf; and NREL, Puerto Rico Low-to-Moderate Income Rooftop PV and Solar Savings Potential Data Catalog https://data.nrel.gov/submissions/144 (last updated Dec. 28, 2020).

corresponds to low and moderate income households. NREL also highlighted several reasons why rooftop solar is recommended for Puerto Rico.

- High solar irradiance: the average annual global horizontal irradiance ("GHI") (5.89 kWh / m2 / day) in Puerto Rico is 22% higher than the average GHI in the United States.
- Puerto Rico has a higher proportion of residential structures; This contributes to greater technical potential due to domestic electricity consumption.
- Puerto Rico has significantly lower per capita electricity consumption compared to the US (4,665 kWh vs 12,900 kWh per household per year).

Therefore, even if Puerto Rico were to consume electricity at the US rate, it would still have almost 150% of the amount of rooftop potential as electricity consumption for the entire residential electricity sector. When considering its actual energy consumption, Puerto Rico has 425% more potential for roof generation for all residential structures than the corresponding electrical consumption of those residences. Just for LMI buildings, Puerto Rico has 570% more roof generation potential than electricity consumption. Even under an overly conservative assumption that 50% of LMI buildings in Puerto Rico were structurally unsuitable for rooftop solar, there would still be more than 2.5 times the amount of rooftop potential compared to current consumption. The commercial sector in Puerto Rico is also well adapted to adopt distributed solar energy with storage. The extensive shopping centers and other facilities with large parking lots and roofs can be used to place solar panels to generate energy at or near the place of consumption.

III. PREB should reject PREPA's proposal to spend billions on hardening the long-distance transmission lines.

The majority of PREPA's FEMA funding request—74%—concerns transmission hardening projects which serve "PREPA's current centralized-power system" rather than the future distributed power system that PREPA is required to build.[21] During the February 24th technical conference, Mr. Baretty acknowledged that this transmission hardening is only necessary for as long as long-distance transmission lines carry most of the island's power from the "aged, unreliable,"[22] polluting power plants on PREPA's southern coast to the San Juan metro area.[23] As all parties have pledged to end this unresilient and unaffordable arrangement, it seems unwise to spend the majority of FEMA's grant on shoring up the soon-to-be-obsolete system.

Mr. Fagan pointed out that many of these transmission hardening projects "might likely be marginal or not cost effective relative to DER solutions,"[24] for two reasons: "If you do have a lot more DERs, it can have the effect of reducing blue sky peak loads in addition to being able to provide resiliency during extreme events."[25]

In addition, PREPA's current proposed transmission hardening proposal significantly overstates the amount of transmission hardening necessary to serve critical loads. This is because PREPA did not calculate the actual critical load at each feeder, but rather used the entire load of the feeder as a rough estimate. At the

[21] PREPA Motion at 35.
[22] PREPA Motion at 25.
[23] https://youtu.be/lYG9XBIiOaE?t=8771.
[24] https://youtu.be/lYG9XBIiOaE?t=7963.
[25] https://youtu.be/oGYujWJ8S7s?t=109.

February 23rd conference, Mr. Fagan explained that the critical load could be as low as 20% of the feeder load, and that if PREPA could produce data with more granularity, then the utility could replace numerous transmission projects with DER:

> In the IRP, the granularity was, there's roughly 1,100-1,200 MW of [load per feeder]. But to the extent that the actual critical load is 20% of that or 60% of that, that would be critically important for any proper analysis of distributed resource alternatives. We wouldn't want to cost out 1,100 or 1,200 MW of distributed resource alternatives for essential facility load if the real number is one third of that. So that's the purpose behind it - to have a better set of data to more accurately understand what it would cost for some of the distributed solutions - that would not be hardening the systems for the entire feeder load.[26]

Mr. Baretty explained that PREPA could conduct such a study, if given additional resources: "We did not have enough manpower to gather this information and the same thing still applies today. Because of the financial constraints that PREPA has at the moment."[27] The solution is clear: if FEMA will provide funding for PREPA to obtain more granular critical load data, that could save hundreds of millions of dollars on unnecessary transmission spending.

One reason that PREPA continues to insist on these transmission projects may be the bias of its consultants in favor of fossil fuels and transmission hardening, and against distributed solar + storage systems. Mr. Fagan noted that his "worry is the bias [in favor of transmission and against distributed resources]. There's an industry bias."[28] For example, the proposed T&D Operator, LUMA Energy, objects to PREPA using FEMA funds to install rooftop solar systems and batteries sited on ratepayers'

[26] https://youtu.be/oGYujWJ8S7s?t=2793.
[27] https://youtu.be/oGYujWJ8S7s?t=2317.
[28] https://youtu.be/oGYujWJ8S7s?t=6828.

properties. Contrary to the installation of solar systems on the rooftops of PREPA ratepayers' properties, LUMA is interested in having its affiliated companies Quanta and ATCO use the funds for transmission projects, that keep ratepayers captive to unreliable powerplants burning imported fuel. Quanta Services, the LUMA Energy parent/affiliate corporation has been very clear about its intention to take advantage of its relationship with LUMA to profit from the FEMA funds:

> Quanta believes there is opportunity for it to compete for work associated with Puerto Rico's electric T&D system modernization efforts that are separate from its ownership interest in LUMA. Puerto Rico's electric T&D system is at a critical juncture after the destruction caused by Hurricanes Maria and Irma. As a result, the government of Puerto Rico, through the P3 and in collaboration with PREPA, have embarked on a plan to rebuild, modernize, harden and "green" its power grid, a majority of which is expected to be funded by U.S. federal disaster relief agencies and managed by LUMA. The P3 estimates that more than $18 billion of electric T&D capital investment could be required through 2028 for this initiative.[29]

During the recent optimization workshop, one of the LUMA Energy representatives, Lee Wood, incorrectly alleged that FEMA would not allow the use of funds for behind the meter electric generation, that is, located at the residence or business of the consumer, mainly on the rooftops of structures.[30] As detailed above, FEMA's own statements demonstrate that no law or rule prevents FEMA from funding rooftop solar + storage systems.

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[29] Quanta Services, Inc., *Quanta Services and ATCO-Led Consortium Selected by the Puerto Rico Public-Private Partnership Authority for the Operation and Maintenance of Puerto Rico's Electric Power Transmission and Distribution System* (Jun 22, 2020), https://investors.quantaservices.com/news-events/press-releases/detail/277/quanta-services-and-atco-led-consortium-selected-by-the.

[30] https://youtu.be/oGYujWJ8S7s?t=6822.

Biased consultants with conflicts of interest have long plagued PREPA's decision-making with respect to grid planning. A better solution would be for PREPA to listen on its own workers, who have significantly improved interconnection times for distributed solar + storage systems over the last year, and the engineers and professors at Puerto Rico's universities, who have decades of experience observing and researching the island's grid. PREPA's unions, the island's academics, and Puerto Rico community organizations have formed a coalition to support the Queremos Sol project. Unlike PREPA's 10-Year Plan and FEMA funding requests, the Queremos Sol proposal is completely aligned with the approved Integrated Resource Plan and sets forth a detailed proposal to achieve the Puerto Rico's legally mandated Renewable Portfolio Standard (RPS) of renewable energy by 2022, 40% by 2025, 60% by 2040 and 100% renewable energy by 2050.

During the February 23rd technical workshop, participants urged PREPA to hold off on transmission projects until they could be evaluated under a set of criteria – and that only the "no-regrets" projects that met ALL criteria should be funded. It would be premature to spend any taxpayer money on transmission projects until we know whether we can instead invest in distributed resource deployments to replace them – and before the transmission projects have been comprehensively evaluated and determined to be "no-regrets" projects, in accordance with Law 17-2019.

IV. PREB should reject PREPA's proposal to spend nearly one billion dollars on new gas infrastructure and projects at soon-to-retire fossil fuel plants.

Through the 10-Year Infrastructure Plan, PREPA's consultants attempt to resurrect the gas infrastructure proposals that PREB already considered—and rejected—from PREPA's proposed Integrated Resource Plan. PREB must dismiss PREPA's attempt to relitigate these issues and reiterate the severe restrictions on new fossil resources in the approved Integrated Resource Plan:

- Para. 653: "The Energy Bureau FINDS that PREPA has not supported inclusion of a new CC at Palo Seco by 2025 in a least cost plan."
- Paras. 654-655: limited PREPA to spending $5M on preliminary siting, permitting, and planning for Palo Seco, only if PREPA could do so without interfering with the procurement of renewables and storage. PREB retained the authority to cut off that spending once it became clear that the gas plant was unnecessary to maintain reliability, and that renewables + storage costs were in line with forecasts.
- Para. 873: "The Energy Bureau REJECTS PREPA's plans for retirement of all eighteen (18) of the existing gas turbine peaking units located at Daguao, Yabucoa, Jobos, Vega Baja, Palo Seco, Aguirre, and Costa Sur and replacement with a new set of GTs."
- Para. 873, 885: PREB allowed PREPA to consider "some limited thermal peaker replacement" for the very worst-performing units. In Para. 885, PREB explained that it would only allow, at the very most, 81 MW of new gas-fired peaker capacity.[31]

PREPA's plans for a $572M San Juan-area utility-owned gas plant do not follow the restrictions from the approved Integrated Resource Plan: PREB only allowed the utility to plan for a gas plant in the event that renewable and storage

[31] Final IRP Order at paras. 653-55, 873, 885.

prices would be higher than expected.[32] PREPA has not even received the first set of bids from its Renewable Request For Proposals, and yet seeks to proceed full steam ahead with gas plant planning, having already spent over $281,000 of public money in consultants' fees.[33] PREB was correct to put a halt to this spending spree, and must continue to prohibit spending on this PREPA pet project.

PREPA's proposal for new gas-fired peakers blatantly violate the approved Integrated Resource Plan's limit of, at most, 81 MW. In fact, PREPA's gas peaker proposal is almost exactly the same as the one PREB already rejected in the approved IRP:

The Energy Bureau REJECTS PREPA's plans for retirement of all eighteen (18) of the existing gas turbine peaking units located at Daguao, Yabucoa, Jobos, Vega Baja, Palo Seco, Aguirre, and Costa Sur and replacement with a new set of GTs. PREB Final Resolution and Order para. 873	In the Revised 10-Year Plan, PREPA proposes to spend $280M to replace eleven Frame 5 units at Daguao, Yabucoa, Jobos, Vega Baja, and San Juan with gas turbines, totaling 330 MW. PREPA also proposes to use FEMA funds to replace Aguirre and Costa Sur peakers with gas turbines, but has not included those costs in the Revised 10-Year plan. PREPA Motion pp. 27-30.

[32] Final IRP Order at para. 73 ("…to protect against the uncertainty of near-future solar PV and battery energy storage price outcomes.").
[33] PREPA Motion in Compliance With Order Entered on February 1, 2021, PREB Dkt. No. NEPR-MI-2021-0003 (Feb. 16, 2021).

PREPA's new consultants, Sargent & Lundy, make the same tired arguments that PREB already rejected from PREPA's old consultants, Siemens, claiming for example, that only gas-fired resources can serve critical loads.[34]

Before responding to these previously-rejected arguments, Local Environmental Organizations note that PREB should not consider PREPA's substantive arguments on this point at all. In August 2020 PREB issued its Final IRP Order, which decisively addressed the issues of what generation types could serves critical load, and what limited degree of new gas infrastructure PREB authorized. PREPA chose not to seek reconsideration of or appeal PREB's Final IRP Order, and the deadline for doing so has long since expired. PREPA and its consultants may not now relitigate these settled issues. Moreover, given the impropriety of PREPA's collateral attacks: further attempts to relitigate issues already decided in the Integrated Resource Plan, or further attempts to undermine the approved Integrated Resource Plan, should be subject to sanctions under Regulation 8543 Article X Section 10.01(A) and Article XII Section 12.02.

With that said, Local Environmental Organizations provide a few reasons why PREB already rejected these claims:

- After being challenged on the assumption that only thermal resources could serve critical load, Siemens acknowledged that renewable resources could be available immediately after a major event, and recanted their assumption.[35]

[34] PREPA Motion at 28-31.
[35] PREPA, Corrected Rebuttal Testimony of Nelson Bacalao at 7, PREB Dkt. No. CEPR-AP-2018-0001 (Jan. 20, 2020), https://energia.pr.gov/wp-content/uploads/sites/7/2020/01/Corrected-Rebuttal-Testimony-of-Nelson-Bacalao-PH.-D.-in-Support-of-PREPAs-Draft-Integrated-Resource-Plan-CEPR-AP-2018-0001.pdf.

- In December 2019, the Energy Bureau's Energy Storage Study confirmed that "thermal resources are not required to prevent loss of critical loads."[36]
- In January 2020, the day after a seismic event put two gas-fired powerplants offline, renewables stood ready to serve critical load.[37]

In sum, the gas infrastructure requests in PREPA's 10-Year Plan are direct violations of the approved Integrated Resource Plan and therefore, as detailed above, are ineligible for FEMA funding under 2 CFR 200.403(c) and 2 CFR 200.318(a). Any federal funds that PREPA obtained towards these projects would have to be returned.

In addition, PREPA proposes to spend $134M on projects at six power plants, several of which are slated for retirement this decade.[38] Just as it is unwise to purchase new gas infrastructure which will have to be shut down well before the end of its useful life to comply with Law 17-2019, it is also unwise to spend money on "aged, unreliable" fossil fuel plants which are due to retire very soon. PREPA claims the projects are necessary for reliability and resiliency, but as detailed above in Section 2, PREPA may well be able to obtain the same reliability and resiliency benefits more cost-effectively through distributed solar + storage system deployment.

The gas infrastructure portion of the 10-Year Infrastructure Plan is yet another attempt in the years-long scheme of PREPA's consultants to flood the island with unreliable, unaffordable gas plants. PREB already considered these exact

[36] PREB, Resolution, PREB Dkt. No. NEPR-MI-2020-0002 (Jan. 7, 2020), https://energia.pr.gov/wp-content/uploads/sites/7/2020/01/NEPR-MI-2020-0002-Estudio-Sistemas-de-Almacenamiento-de-Energi%CC%81a.pdf.
[37] Puerto Rico Electric Power Authority, Presentation for Evidentiary Hearing Panel A, Slide 20, PREB Dkt. No. CEPR-AP-2018-0001 (Feb. 3, 2020).
[38] PREPA Motion at 31-34. This includes black start units at Aguirre Power Plant and Costa Sur Power Plant.

proposals and determined that they were **not** part of a least-cost plan. Therefore, FEMA would effectively be subsidizing fossil fuels by paying for this gas infrastructure over less expensive and more resilient distributed solar + storage systems. President Biden has already declared, through Executive Order, that federal agencies are prohibited from subsidizing fossil fuels going forward.[39]

Historically, these gas plant schemes have only benefitted the methane gas industry and PREPA's consultants, to the expense of the public, the island's environment, and our planet's climate. The continuation of such a policy is not an appropriate use of FEMA funds. Instead, these funds should be used to provide direct, life-saving electric service to Puerto Rico residents.

V. PREPA Has Failed To Allow The Public Or Even PREB To Adequately Participate In The Creation Of The 10-Year Infrastructure Plan.

Following the rejection of most of PREPA's consultants' gas rush proposals in the Integrated Resource Plan process, PREPA asked its consultants to transfer those rejected proposals into a secret new plan: the 10-Year Infrastructure Plan. PREPA submitted that plan to FEMA, without notice to the public or even to PREB. Several months after the creation of the 10-Year Plan, PREPA now deigns to "make the Energy Bureau privy of the process," but not the public. This violates federal law and Puerto Rico law, and is another reason to reject the 10-Year Infrastructure Plan.

[39] Exec. Order No. 14,008, 86 FR 7619 (Jan. 27, 2021), https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad.

The use of funds allocated pursuant to the Stafford Act requires "public access to policies governing the implementation of the public assistance program." 42 U.S.C. § 5165c. PREPA's motion acknowledges that the 10-Year Infrastructure Plan includes Stafford Act funds, therefore PREPA is required to comply with the applicable public participation requirements, including the preparation of an annual action plan for public comment and that all comments received during that period be addressed. *See* 24 C.F.R. §§ 91.320, 91.115(b)(5). In the event that a Citizen Participation Plan is required—as it should be in this case—the grantee must certify that the participation plan is followed. To comply with the participation plan, the grantee is charged with providing reasonable and timely access to local meetings, and the opportunity for individuals to review proposed activities and program performance; providing timely written answers to written complaints and grievances; and identifying how the needs of Spanish-speaking residents will be met in public hearings where they can be expected to participate. *See* 24 C.F.R. §570.431. Compliance with the above-cited provisions requires that PREPA provide opportunities for effective public participation which always serve to enhance and improve plans and proposals.

In addition, Law No.17-2019, Puerto Rico's Energy Public Policy Act, mandates that PREPA "promote transparency and citizen participation in every process related to electric service in Puerto Rico." PREPA's Organic Act also provides that the term citizen participation refers to the "various mechanisms that allow customers of PREPA and electric power generation and/or distribution companies certified in Puerto Rico to have a forum to express their concerns, make suggestions, and be

included in the decision-making process."22 L.P.R.A. § 192(n). The mechanisms listed in the statute include, but are not limited to, the "request and receipt of comments, photographs, and other documents from the public, administrative meetings of PREPA where customer focus groups participate, regional meetings open to PREPA's customers in such region, public hearings, and the establishment of vehicles that enable participation by electronic means." *Id.* Further, Law No. 57-2014 was approved with the purpose of establishing "strategic planning and information requirements that PREPA must provide to guarantee an efficient electrical system, promote transparency in its processes, and make active citizen participation feasible, among other matters. . . ." In sum, PREPA's refusal to allow public participation in the creation of the 10-Year Plan violates federal law and Puerto Rico law, jeopardizing PREPA's eligibility for FEMA funding.

Conclusion

PREB should reject the 10-Year Plan and request that a FEMA representative attend PREB's IRP implementation conferences to provide first-hand explanations on FEMA's funding requirements. PREPA has misrepresented FEMA statements in the past[40] and appears to be doing so here again, at the behest of PREPA consultants that are biased against distributed renewables + storage. Given the economic crisis in Puerto Rico, available resources, such as the funds that PREPA has sought from FEMA, should be invested in distributed solar + storage resources. This will save lives, promote local economic development, and change the trajectory of sending billions of dollars per year out of Puerto Rico's economy to pay to imported fossil fuels to maintain a harmful and unreliable system.

Respectfully submitted,

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[40] Petitioners' Response to PREPA RFP Cancellation Notice at 9, PREB Docket NEPR-AP-2020-0001 (June 16, 2020), https://energia.pr.gov/wp-content/uploads/sites/7/2020/06/2020-06-16-Petitioners-Response-to-RFP-Cancellation-Temporary-Generation-PREPA-PREB.pdf.

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CERTIFICATE OF SERVICE

We hereby certify that, on March 2, 2021, 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; mvazquez@diazvaz.law; and kbolanos@diazvaz.law

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