

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

NEPR
Received:
Mar 18, 2021
3:49 PM

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

**REPLY TO PREPA'S RESPONSE TO LEO'S OPPOSITION RE: 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 reply to PREPA’s response to the Local
Environmental Organizations’ Opposition to PREPA’s 10-Year Infrastructure Plan
and request that PREB reject said plan.

Argument

PREPA's response still does not answer a fundamental question: why does the 10-Year Infrastructure Plan exist? PREPA now acknowledges that FEMA did not ask for "specifically a 10-year plan."¹ PREPA still has not provided any law or rule requiring a 10-Year Infrastructure Plan, or any correspondence from FEMA requesting a 10-Year Infrastructure Plan - or explained why PREPA never provided FEMA with the approved Integrated Resource Plan, which is itself a detailed long-term least-cost least-risk plan for the island's grid, optimized through computer modeling and through extensive input by the public and all stakeholders.² It appears, then, that PREPA's consultants did not create the 10-Year Plan to meet any FEMA requirement, but rather as a collateral attack on the portions of the approved IRP that PREPA's consultants did not like. The 10-Year Plan conflicts with the approved IRP in four important ways.

I. **The approved IRP prioritizes renewables + storage, while the 10-Year Plan does not include a single dollar towards renewable and storage.**

All parties acknowledge that aggressive renewables + storage deployment must be PREPA's priority, and all parties also agree that FEMA may provide funding for renewables and storage.³ It simply does not make sense then, for PREPA to insist that all of these thousands of MW of renewables and storage must be owned and paid

¹ PREPA, Response to the Local Environmental Organizations Opposition to PREPA's Motion Seeking PREB Approval of 10-Year Infrastructure Plan at 1, PREB Case No. NEPR-MI-2021-0002 (Mar. 9, 2021) [Hereinafter "PREPA Response"].

² As opposed to the 10-Year Infrastructure Plan, which is a plan created in secret, out of the public eye, by PREPA's consultants, without cost optimization or computer modeling, designed to meet criteria selected by consultants rather than chosen by the people and legislators of Puerto Rico.

³ PREPA Response at 6-7.

for by “private, for-profit entities” – especially as PREPA’s consultants ask FEMA to pay for at least \$7B in utility-owned transmission equipment and nearly \$1B in utility-owned gas-fired generation. Nothing in Puerto Rico law or the approved Integrated Resource Plan requires that all renewable and storage resources be privately owned. PREPA is silent on Local Environmental Organizations’ point that no Puerto Rico law, rule, guideline, or policy prohibits FEMA from funding utility-owned distributed renewables and storage sited on private- or public-owned homes.⁴ In fact, other Puerto Rico agencies are already using federal money to pay for rooftop solar + storage units.⁵ PREPA has already trained⁶ its employees on installation and maintenance of rooftop solar + storage systems, and customers could pay for the cost of renting these units through on-bill financing programs - as PREB’s consultant has already pointed out.⁷ PREPA acknowledges that FEMA could also pay for clean energy projects like demand response and energy efficiency, but points out that they would need a specific legal structure⁸ - all the more reason to reject the 10-Year Plan so that PREPA can have the time to include these items in its FEMA funding request.

⁴ LEO Motion pp. 5-6.

⁵ 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>.

⁶ through coursework on net metering and design and installation of rooftop solar + storage systems, offered through PREPA's Commercial Operations Training Center and Electrical System Training Center.

⁷ <https://youtu.be/oGYujWJ8S7s?t=6719>.

⁸ PREPA Response at 9.

II. **The 10-Year Plan’s transmission spending plan for at least \$7B conflicts with the limitations and requirements that the approved Integrated Resource Plan places on an optimized transmission plan. PREPA’s proposal also ignores the advice of PREB and PREPA’s own consultants.**

PREPA’s proposed Integrated Resource Plan included a transmission spending plan quite similar to what is being proposed in the 10-Year Infrastructure Plan. In the proposed Integrated Resource Plan, PREPA set forth \$8.6B in spending, with the majority to be spent on hardening the long-distance transmission lines connecting centralized powerplants in the south to the San Juan metro area.⁹ PREB rejected this plan, instead requiring a “scaled-down, refined and more optimal approach” to determine which transmission projects were truly “no-regrets” projects, and limiting PREPA to \$1.88B in transmission investments, with each discrete investment to be approved by PREB.¹⁰ The 10-Year Plan violates the approved IRP’s decisions on transmission by calling for at least \$7B in transmission spending, which PREPA submitted to FEMA without conducting any optimization or even notifying PREB, let alone obtaining PREB approval. PREPA acknowledges that the IRP’s \$1.88B ceiling on the **costs** of transmission spending do apply to the FEMA funding.

Section 200.403(c) states... that "costs must meet the following criteria in order to be allowable under Federal awards, and that one of these criteria is that "costs" must: "Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity."¹¹

⁹ Puerto Rico Energy Bureau, Case No. CEPR-AP-2018-0001, Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan at Table 14 (Aug. 24, 2020), <https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>. [hereinafter “Final IRP Order”].

¹⁰ Final IRP Order paras. 86, 87, 119, 120.

¹¹ PREPA Response at 5.

The approved Integrated Resource Plan is a procedure that applies uniformly to the activities of PREPA – and it does not allow for \$7B in transmission spending, unattached to any PREB authorization or any optimization process.¹² PREPA urges prompt action so that it can start spending money on at least \$7B of transmission projects, but that is premature: PREB's consultant and even PREPA's own consultants have sharply questioned PREPA's list of transmission investments.¹³ It would be unwise to begin spending money on transmission projects before we know which of these projects are truly “no-regret” investments. The ongoing technical conferences already have shown and will continue to show that many if not most of these investments can be replaced by more cost-effective and resilient rooftop solar + storage systems, and non-wire alternatives.

PREPA proposes to spend more than \$7B of FEMA funding on transmission projects right away without optimizing the plan, and then add renewables to the FEMA funding proposal later. This sequencing has an opportunity cost: Puerto Rican ratepayers would have to pay a premium for renewables obtained through RFPs for PPOAs between third party providers and PREPA as a bankrupt counterparty, because of the concomitant higher financing costs. Furthermore, the sequencing of investments should prioritize direct, life-saving on-site energy + storage procurement and subsequently, any necessary T&D expenditures.

¹² PREB specifically rejected PREPA's proposal to spend \$2.8B in spending on the 115 kV system and \$3.4B in spending on the 38 kV system. Final IRP Order, Table 14, para. 120. If PREPA included any of these projects in its FEMA funding proposal, that would be a blatant and egregious violation of the approved Integrated Resource Plan.

¹³ LEO Motion at 12-15.

III. The 10-Year Plan includes nearly \$1B of fossil fuel powerplant projects, most of which were explicitly rejected in the approved IRP.

Finally, the IRP limited PREPA to \$5M in planning for a Palo Seco gas plant as a last-resort contingency if renewables and storage procurement were not successful. PREB also limited PREPA to considering, at most, 81 MW of new gas peakers.¹⁴ Yet the 10-Year Plan includes \$572M for a utility-owned Palo Seco gas plant and \$228M for 331 MW of utility-owned gas peakers; once again, PREPA submitted these plans to FEMA without the intent to even notify PREB first. PREPA only attempted to determine the alignment of these projects to the approved Integrated Resource Plan after the fact. After being notified of PREB's concerns with the 10-Year Infrastructure Plan and specifically the gas infrastructure proposals, FEMA's February 5th correspondence to PREPA questions "the feasibility to continue with these projects under the Puerto Rico regulatory framework."

FEMA is correct to raise that question because the 10-Year Infrastructure Plan's gas proposals blatantly violate the approved Integrated Resource Plan. First, the 10-Year Plan calls for 330 MW of gas peakers, when the approved IRP allows, at most, 81 MW of new gas peakers. The 10-Year Infrastructure Plan also does not approach the Palo Seco gas plant as a last-resort contingency as mandated in the approved Integrated Resource Plan, but rather as a project to be designed, planned and built immediately. PREPA's recent Monthly Status Progress Report states that PREPA has eleven employees and seven contractors working on this project, and has already spent nearly half a million dollars in less than six months: in short, PREPA

¹⁴ Final IRP Order, paras. 653-655, 873, 885.

is moving full steam ahead with this gas plant proposal as its first option, rather than as a contingency.¹⁵ The approved Integrated Resource Plan limited PREPA's gas spending to a contingency if renewables and storage procurement, and other alternatives were not successful. That process has barely begun, and yet PREPA has already begun to develop a long-term agreement to supply gas to its proposed gas plant.¹⁶ The last time PREPA rushed a gas supply agreement, the result was the disastrous New Fortress Energy contract, which is now under investigation by Puerto Rico¹⁷ and federal authorities.¹⁸

PREPA's consultants have thoroughly abused PREB's very limited allowance for new gas infrastructure planning. PREPA's consultants' fixation on gas resources has interfered with the utility's procurement of renewables and storage, as stakeholders warned that it would.¹⁹ Local Environmental Organizations urge PREB to enforce the provisions of approved Integrated Resource Plan that prioritize the alternatives to procurement of new central station fossil fuel generation, and to consider amending the approved Integrated Resource Plan to strike any permission for new gas resources.

¹⁵ PREPA, Monthly Progress Status Report, PREB Docket CEPR-2018-0001 (Mar. 15, 2021).

¹⁶ *Id.*

¹⁷ Puerto Rico House of Representatives, R C0170 at 1, (Jan. 11, 2021), <http://www.tucamarapr.org/dnncamara/Documents/Measures/6ac3d208-ea6f-40b8-a418-a332dc8b88ac.pdf>.

¹⁸ Order To Show Cause Against New Fortress Energy, Federal Energy Regulatory Commission Docket CP20-466-000, 171 FERC ¶ 61,230 (June 18, 2020).

¹⁹ Negociado de Energía en vivo, Evidentiary Hearing / CEPR-AP-2018-0001, YouTube (Feb. 4, 2020), <https://youtu.be/-RXb0bf5ScY?t=5950>.

IV. **Puerto Rico law guarantees Local Environmental Organizations the right to robust public participation in this docket, and in any activities by PREPA to alter Puerto Rico’s electric system.**

Here Local Environmental Organizations must correct PREPA’s false or misleading statements on public participation. PREPA mistakenly suggests in its response that Local Environmental Organizations, and the public generally, lack the right to participate in dockets which analyze related to the use of federal grants. PREPA also erroneously declares that, as to “public participation, there are no additional requirements” on PREPA beyond “those that have already been implemented.”²⁰

The Energy Bureau has already ruled that the right to public participation in energy policy continues beyond the issuance of a final IRP order:

Moreover, the Energy Bureau agrees with EDF that it is in its interest **to make it as easy as possible for stakeholders to participate and share perspectives and expertise. Docket No. NEPR-MI-2020-0012 and the dockets the Energy Bureau may open in the future to implement the Approved IRP and the Modified Action Plan are designed to do exactly that.**²¹

This is consistent with Puerto Rico law, which, in addition to directing PREPA and the Energy Bureau to facilitate strong public involvement during the creation of an IRP, *also* mandates “public participation in every process related to electric power service in Puerto Rico.” 22 L.P.R. § 1051(o) (emphasis added). As PREPA correctly acknowledged in its response, both Acts 17-2019 and 57-2014 “indeed encourage

²⁰ PREPA Response at 15.

²¹ Puerto Rico Energy Bureau, Resolution at 6, PREB Dkt. No. CEPR-AP-2018-0001 (Dec. 15, 2021) (emphasis added).

public participation” such as that “granted to Local Environmental Organizations and other interested parties through . . . the IRP process itself”²²—but that participation must continue in this and every other process that implementation of the IRP encompasses. As the present dockets concern the processes by which PREPA seeks to make changes to Puerto Rico’s energy system robust public participation must be allowed and encouraged.

More to the point, PREPA’s Revised 10 Year Plan violates the approved IRP in several ways. If PREPA was allowed to go forward with the 10-Year Plan, this would effectively be a modification of the approved Integrated Resource Plan. The Energy Bureau has ruled that the Integrated Resource Plan cannot be modified without ample public participation:

Article 1.9(4) of Act 17-2019 states that the IRP may not be eliminated or altered under any circumstances until a plan review process is carried out before the Energy Bureau and evidence is furnished thereof. Therefore, any modification or amendment to the Approved IRP must be done with ample participation from the general public and interested parties, following the established statutory and regulatory procedures, as required by the energy public policy, Article 6.23 of Act 57-2014, Articles 1.4(10)(c) and 1.9 of Act 17-2019, and Regulation 9021.²³

As to PREPA’s theory that no participation requirements attach to FEMA funding, this is likewise incorrect. PREPA states in its response that of the Puerto Rico laws cited by Local Environmental Organizations, none “specifically applies” to the federal funds, appearing to suggest that, because the projects would be financed by federal dollars, the people of Puerto Rico don’t get a say in how that money is

²² *Id.*

²³ *Id.*

spent. As to this novel and unsupported theory that the federal origin of its FEMA grants somehow blocks those funds from public participation and review, Local Environmental Organizations must again direct PREPA to the text of Acts 17-2019 and 57-2014. Nothing about “citizen participation in every process related to electric power service in Puerto Rico,” nor “implementation of the public policy on energy shall be an ongoing planning, consultation, execution, evaluation, and improvement process in all energy-related matters,” 22 L.P.A. § 1051(c), (o), suggests that this public accountability is limited to only state funded projects. The “availability,” “safety and reliability,” and “maximum percentage of renewable energy that may be integrated” in the Puerto Rico electric system, *id.* § 1051(b), (c), (h), are all proper subjects for public oversight and participation, and are all critically affected by decisions as to the use of FEMA funding. These dimensions are implicated equally regardless of the source of the funding for energy infrastructure projects, and are all the more heightened where, as here, PREPA’s consultants seek to undercut an approved IRP that reflects significant public participation, to pursue their own unauthorized, unpopular, and unlawful agenda.

Conclusion

Local Environmental Organizations appreciate the opportunity granted by PREB to participate in the examination of PREPA's proposal on how to spend the FEMA grant, as one of the public interest stakeholders. All parties agree that the historic amount of available federal funds is a once-in-a-lifetime opportunity to transform the Puerto Rico's electric system. Yet PREPA's plans for this money do not embrace renewables and storage, but rather overspend on unnecessary transmission projects, and would continue to fuel an addiction to imported fuels that only benefits PREPA's biased and conflicted consultants. PREB' wisely halted PREPA's spending spree, to ensure that the federal funds are spent intelligently on projects that truly transform the electric system as envisioned by the approved IRP. Local Environmental Organizations urge PREB to reject the 10-Year Infrastructure Plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that, on March 18, 2021, we have filed this Reply 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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