

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

<b>NEPR</b>
<b>Received:</b>
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<b>6:25 PM</b>

**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 Response to Order entered on March 3, 2021

**RESPONSE TO THE LOCAL ENVIRONMENTAL ORGANIZATIONS  
OPPOSITION TO PREPA'S MOTION SEEKING PREB APPROVAL  
OF 10-YEAR INFRASTRUCTURE PLAN**

**I. PROCEDURAL BACKGROUND**

On February 16, 2021, PREPA filed *Response to Resolution and Order Entered on January 25, 2021 and Request for Approval of Revised 10-Year Infrastructure Plan* (“10-Year Plan Motion”). The filing was in response to various orders entered into by the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau” or the “Bureau”) regarding the PREPA 10-Year Infrastructure Plan December 2020 (“10-Year Plan”) and its relationship to the Final Integrated Resource Plan and Modified Action Plan approved by the Energy Bureau in case *In Re: Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan*, case no. CEPR-AP-2018-0001 (the “Final IRP Order”)<sup>1</sup>.

More specifically, the 10-Year Plan Motion responded to the January 25, 2021 order whereby the Energy Bureau issued a Resolution and Order, under Case No. NEPR- MI-2020-

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<sup>1</sup> For a detailed procedural background please refer to the *Response to Resolution and Order Entered on January 25, 2021 and Request for Approval of Revised 10-Year Infrastructure Plan* filed on February 16, 2021.

0016, requiring PREPA to “[r]evise the 10-Year Plan to correct its noncompliance with the Approved IRP and Modified Action Plan” (the “Order”).

In response to the 10-Year Plan Motion, on March 2, 2021, various Local Environmental Organizations (“LEO”)<sup>2</sup>, filed a document titled *Opposition to PREPA’s Motion Seeking PREB Approval of 10 -Year Infrastructure Plan* (“LEO’s Opposition”) requesting the Energy Bureau to reject PREPA’s Revised 10-Year Plan, which PREPA had filed in compliance with the directives of the Energy Bureau. As a result, on March 3, 2021 the Energy Bureau entered order requiring PREPA to respond to LEO’s Opposition by March 8, 2021 at 12:00pm.<sup>3</sup>

PREPA proceeds accordingly.<sup>4</sup>

## II. PRELIMINARY STATEMENT

The Energy Bureau should out-right reject the LEO’s red herring and misguided intent to amend the Final IRP Order with requests that were already rejected during the IRP approval process. PREPA has complied with the Energy Bureau’s Order and has filed a Revised 10-Year Plan that harmonizes any inconsistency with the Final IRP Order and points to an appropriate way forward that guarantees compliance with applicable federal and state statutes as well as the economic recovery of Puerto Rico. Accordingly, PREPA hereby adopts by reference and reiterates its position, as discussed in the 10-Year Plan Motion, that any incompatibility identified by the

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<sup>2</sup> Comité de Dialogo 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.

<sup>3</sup> PREPA’s counsels of record were never served with the Order. When the undersigned were made aware of the Order, they immediately contacted the Energy Bureau to ask why they were not served with LEO’s Opposition. The Energy Bureau informed that it had been a clerical mistake and granted PREPA until March 9, 2021 to file the response.

<sup>4</sup> PREPA reserves its right to oppose to LEO’s participation in the captioned matter, to assert LEO’s lack of standing, its lack of compliance with the applicable laws and regulations for failure to seek leave to intervene in the captioned matter before initiating any motion practice, its lack of standing to participate in a non-adjudicative matter as reiterated several times in different decisions entered by the Energy Bureau and the Puerto Rico Court of Appeals, among others.

Energy Bureau between the 10-Year Plan and the Final IRP Order are unequivocally addressed by PREPA's filing of the Revised 10-Year Plan filed on February 16, 2021. The amendments included in the Revised 10-Year Plan are in compliance with the Energy Bureau's Order, they reiterate PREPA's commitment to the Energy Bureau's role in approving all-proposed capital investment projects and sought to ameliorate the negative impact the Energy Bureau's January 25 Resolution had in the disbursement of federal funds for IRP aligned infrastructure projects.<sup>5</sup> It is PREPA's firm position that the majority of the projects submitted as part of the original 10-Year Plan were in alignment with the Final IRP-Order. Specifically, those regarding the Transmission and Distribution system ("T&D"). As the Energy Bureau is keenly aware, the disbursement of these funds by the federal government is necessary to pursue the much-needed improvements to the still vulnerable electrical infrastructure and are essential for the economic recovery of Puerto Rico. The 10-Year Plan Motion and the Revised 10-Year Plan should appease any concerns the Energy Bureau may have regarding incompatibility with the Final IRP Order and the Energy Bureau should allow PREPA to move forward with the projects intended to revitalize PREPA's embattled infrastructure and Puerto Rico's faltered economy.

### **III. RESPONSE AND DISCUSSION**

#### **A. Federal Guidelines for the Use of Federal Funds and Misguided Citations by LEO**

First, LEO contends that "[t]here is no citation of law or rule requiring the 10-Year Plan" PREPA submitted to the Federal Emergency Management Agency's (FEMA) for approval. Although not specifically a 10-year plan, FEMA does require a work plan for the use of the funds

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<sup>5</sup> The January 25 Resolution required PREPA to, among other matters, "[i]mmediately abstain from making any capital investments in its generation fleet or the T&D system without the prior approval of the Energy Bureau." This Resolution prompted FEMA to send letter to PREPA regarding the revisions to the 10-Year Plan required by the Energy Bureau as well as its effects on the 29 projects already submitted to FEMA. See Exhibit A.

allocated to the applicant. As part of its responsibilities and in attention to the size of the grant approved by FEMA, PREPA needed a long-term plan that would allow it to reconcile all the public policies and plans for the corporation. It did not make sense for PREPA to draft a plan that did not consider the Final IRP Order, FEMA funds, 408 funds and Necessary Maintenance Expenses (NME). FEMA and Puerto Rico's Central Office for Recovery, Reconstruction and Resiliency ("COR3") requested from PREPA a 90-days' work plan to be consistent with the utility's 10-Year Infrastructure Plan and be submitted within 90 days of the funding obligation announcement. The submittal of these plans is required by FEMA for PREPA to be eligible to receive the \$10.7 billion funding obligation. PREPA decided to make its long term plan a 10-Year Plan in consideration of the magnitude of the projects contemplated as well as the amounts involved. Accordingly, this matter should not be considered an issue for the Energy Bureau.

Second, LEO's Opposition argues at page 3 that "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." This statement is disingenuous at best and outright false at worse.<sup>6</sup> For this proposition LEO cites several provisions of the Federal Cost Principles of 2 C.F.R. 200 Subpart E, specifically 2 C.F.R. 200.403(c) and 2 C.F.R. 200.318(a) which state as follows:

- (1) one of the "Factors affecting allowability of costs" – 2 C.F.R. 200.403(c),
- (2) one of the factors used in determining whether costs are reasonable – 2 C.F.R. 200.404(e), and
- (3) one of the requirements governing procurement of contracts funded under Federal grants – 2 C.F.R. 200.318(a)

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<sup>6</sup> Unfortunately, this is not the first time LEO misstate legal dispositions. *See*, Resolution dated December 15, 2020 *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, case no. CEPR-AP-2018-0001 (where the Energy Bureau stated "We are confounded on how the LEO truncates and misquotes the provisions of the referenced Section 1.03.").

LEO's arguments incorrectly cites the effects of these statutes and their requirements. The Cost Principles of 2 C.F.R. Part 200 – which apply to all Federal grant funding of all federal agencies for all kinds of work - do not limit what work the Federal agency is to approve. Specification of the work being funded by a Federal grant is determined by the Federal agency awarding the grant. Rather, the Cost Principles govern determination of what *costs* incurred in performing the *work* funded by a grant are “allowable”. These regulations do not apply at all to whether or not the *work* proposed to be funded by a grant should be approved. LEO's Opposition's reliance on the Federal Cost Principles as prohibiting FEMA from funding work without regard to whether that work is consistent with the Final IRP Order is completely misguided.

For example, LEO's Opposition states that “federal law prohibits FEMA from funding any project that is inconsistent with the approved Integrated Resource Plan” because Puerto Rico laws “require PREPA to conform its activities to the approved Integrated Resource Plan” and “[t]he approved IRP 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 C.F.R. 200.403(c)”<sup>7</sup> This conclusion is legally wrong. Section 200.403(c) states only 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.”

This section applies only to the “costs” incurred in performing the “work” that is provided under a federal award. *See, e.g.*, 2 C.F.R. 200.401(a).<sup>8</sup> The Cost Principles – which apply to all Federal grant funding of all federal agencies for all kinds of work - do not limit what *work* the

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<sup>7</sup> LEO Opposition Pag.3

<sup>8</sup> These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards”.

Federal agency is to approve. Specification of the work being funded by a Federal grant is determined by the Federal agency awarding the grant. Quite simply, the IRP is a long-term plan, approved by the Energy Bureau describing work to be performed in the future; it does not relate to a determination of what the *costs* of that work might be. Whether or not work is or is not in compliance with the IRP, the work proposed by PREPA is not in violation of a federal regulation specifying the allowable cost of performing work funded by grants.

Similarly, LEO's citation that 2 C.F.R. 200.318(a) – which specifies the “General Procurement Standards” applicable to procurement of contracts to be funded by a Federal grant – somehow applies to what projects are or not in compliance with the IRP – is inaccurate. 2 C.F.R. 318(a) states only that:

(a) The non-Federal entity must have and 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. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327. (Emphasis added)

Under Section 200.318(a), the only thing that must be ‘consistent with State, local, and tribal laws and regulations’ *is the procurement* of whatever is funded under the grant – not whether that being funded is something that meets some other state or regulatory agency requirement. (Emphasis added). PREPA is committed to following the directives the Energy Bureau orders and will do so in compliance with state law. However, it is important to point out that LEO's Opposition gravely misstates the applicable federal guidelines for the use of federal funds and creates requirements that are just not there.

## **B. Renewable Energy Sources Procurement and Sustained Public Policy Towards Transition to Renewables**

Third, the Government of Puerto Rico and PREPA are in line with the mandates of Act 17-2019<sup>9</sup> which requires an aggressive transition towards renewable energy sources and PREPA is currently on track to comply with the legally mandated requirements towards renewable energy generation. In the Final IRP Order, the Energy Bureau directed PREPA to develop competitive solicitation processes for procurement of renewable resources and battery energy storage resources in support of “no regrets” findings for these resources from the IRP and in furtherance of meeting Act 17-2019 targets for renewable energy installations, and exceeding those targets were economical.<sup>10</sup> For that purpose, the Energy Bureau opened a case to oversee the implementation of the Final IRP Order and Modified Action Plan, including the Procurement Plan and renewables requests for proposals. *In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Recourse Plan and Modified Action Plan*, case no. NEPR-MI-2020-0012 (the “Renewables Docket”).<sup>11</sup> In compliance with the Modified Action Plan, on February 22, 2021, PREPA opened Tranche 1 of the Renewables RFP for the procurement of the 1,000 MW of renewable energy through power purchase agreements and intends to follow through with the Renewables Docket in compliance with the metrics established by Act 17-2019 and the Final IRP Order.

Even though PREPA agrees with LEO’s statement (page 4) that neither “federal law [n]or regulation prohibit FEMA from providing funding for renewable projects” - and nothing is off the table on how PREPA will seek to comply with Act 17-2019- the manner in which PREPA seeks to comply with its renewables portfolio is a matter of public policy and at this time PREPA intends

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<sup>9</sup> *Puerto Rico Energy Public Policy Act*, Act no. 17 of April 11, 2019 (“Act 17-2019”).

<sup>10</sup> Final IRP Order at pag. 16, ¶ 97.

<sup>11</sup> The motions and orders listed in the rest of this subpart’s narrative were filed or entered in the Renewables Docket.

to follow through with the directives of the Final IRP Order and pursue the competitive bidding processes of procuring renewable energy through power purchase agreements.<sup>12</sup> LEO's proposals, on the other hand, are nothing less than a request to amend the Final IRP Order.

While renewable projects face no prohibition from being funded by FEMA, any project to be funded must still satisfy FEMA eligibility requirements. Eligible applicants for FEMA Section 406, 428 and 404 funding are state and local governments, private non-profit entities, and Indian tribes or other authorized tribal organizations.<sup>13</sup> This funding is not available for private, for-profit entities. While it is possible, with FEMA approval, to arrange for the transfer of the FEMA funding provided under the Section 428 fixed estimate, the transferee must be a government or non-profit entity that is an "eligible applicant" under 44 C.F.R. § 206.222. Facilities constructed with Section 428 funding must be "otherwise eligible for [FEMA Public Assistance] funding pursuant to Section 406 of the Stafford Act."<sup>14</sup> Accordingly, facilities constructed with FEMA funding, whether through Section 406 or Section 428, must be and remain the legal responsibility of PREPA as the eligible subrecipient of the grant.<sup>15</sup> A facility constructed with FEMA funding with the express intention to provide title of that facility to a private partner will likely be ineligible because the new facility would not be the legal responsibility of the eligible applicant for FEMA Public Assistance.<sup>16</sup> Public-private partnership agreements must ensure that an eligible applicant maintains ownership of any facility constructed with FEMA Public Assistance funding, including

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<sup>12</sup> Final IRP Order at pag. 16, ¶ 97-98.

<sup>13</sup> 44 C.F.R. §§ 206.222 and 206.434(a), respectively.

<sup>14</sup> Guide for Permanent Work in Puerto Rico Public Assistance Alternative Procedures (Section 428), September 2020 at pp. 17-18.

<sup>15</sup> 44 C.F.R. §206.223(a)(3); 2 C.F.R. § 200.329.

<sup>16</sup> 44 C.F.R. § 200.223(a)(3).



Section 428 funding.<sup>17</sup> 2 C.F.R. § 200.311 requires that an eligible applicant compensate the federal government once real property “acquired or improved” with Public Assistance funding is “no longer needed for the originally authorized purpose.” A similar requirement is imposed by 2 C.F.R. § 200.313 for “equipment” acquired with federal funds. For projects constructed with Section 406 or 428 funding, the “originally authorized purpose” of the property includes continued legal responsibility (ownership) of the facility.<sup>18</sup> If an eligible applicant uses FEMA funding to construct a facility and subsequently transfers title to a private partner, the eligible applicant will be subject to FEMA’s disposition of real property and equipment requirements under 44 CFR § 200.311(c) and 2 C.F.R. § 200.313(e).<sup>19</sup> In such a situation, FEMA may well require the eligible applicant to repay all or a portion of the funding used to construct the project.<sup>20</sup> Additionally, FEMA funding may not be used to “meet operating expenses” of a new facility constructed under Section 428 of the Stafford Act.<sup>21</sup>

Further, the eligibility of renewable and storage projects for FEMA funding depends a great deal on the specific legal structure of the project. LEO’s proposals for various projects and programs whose structure is not clear, like, “demand response programs”; quick start Energy Efficiency Programs like solar water heaters and appliance replacement incentives, may not meet FEMA requirements. Providing FEMA funding or facilities constructed with FEMA funding to private parties will likely result in a loss of funding (or return of funding already provided) for the subject project.

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<sup>17</sup> 2 C.F.R. § 200.311(c).

<sup>18</sup> 2 C.F.R. § 200.311(b); 2 C.F.R. § 200.313(c).

<sup>19</sup> FEMA Public Assistance Program and Policy Guide (PAPPG) V3.1 at pp. 30.

<sup>20</sup> *Id.*

<sup>21</sup> PAPPG V3.1 at pp. 112.

### C. Transmission and Distribution Projects

Fourth, LEO requests that the Energy Bureau reject “spending billions on hardening the long-distance transmission lines [b]ecause these are used to carry aged and unreliable energy from the south to the metro area.” This proposal would be contrary to the Final IRP Order and would be a “reconsideration” by LEO of the Final IRP Order, which by LEO’s own standards would be at odds with the applicable legal standard. The IRP presented by PREPA included the creation of MiniGrids that were to be fed by renewable energy sources. This demonstrated PREPA’s commitment in creating the necessary infrastructure for the sustaining of renewable energy sources. In the Final IRP Order, the Energy Bureau also accepted PREPA’s MiniGrid concept as a mechanism to provide resiliency during the loss of transmission or distribution system operations due to severe weather events.<sup>22</sup> Nevertheless, the Energy Bureau did not approve the MiniGrid design/construct, as proposed by PREPA, due to its lack of optimization of MiniGrid transmission system expenditures and distributed resiliency approaches. The Energy Bureau noted that it would initiate an optimization proceeding.<sup>23</sup> However, the Energy Bureau recognized the need for transmission system upgrades and therefore accepted PREPA’s plans to spend up to \$2 billion for transmission hardening of existing elements and aging infrastructure.<sup>24</sup> The Bureau stressed that the acceptance couldn’t be construed as an approval of the specific expenditures listed in the Proposed IRP and PREPA was ordered to timely seek the Energy Bureau’s approval for the specific expenditures prior to making any final planning and investments.<sup>25</sup> As stated in the initial

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<sup>22</sup> Final IRP Order at pag. 13, ¶ 86.

<sup>23</sup> *Id.* at pag. 19, ¶ 117 (“The Energy Bureau will open a MiniGrid Optimization proceeding (Optimization Proceeding) following the issuance of this Final Resolution and Order. The Energy Bureau FINDS that this proceeding will be the forum to further explore the costs, benefits, and alternative configurations of combinations of wires (i.e., hardened T&D assets) and local distributed resources that best serve Puerto Ricans in safeguarding against the effects of short-term and extended electric system outages that can occur as a result of severe weather events. The Energy Bureau EXPECTS that this proceeding will commence in the Fall of 2020.”)

<sup>24</sup> *Id.* at pag. 13, ¶ 86.

<sup>25</sup> *Id.* at ¶ 87

Resolution and Order commencing the Optimization Proceedings. *In Re: Optimization Proceeding of MiniGrid Transmission and Distribution Investments*, case no. NEPR-MI-2020-0016 (the “Optimization Docket”), the Energy Bureau expects that some of the MiniGrid transmission projects identified by PREPA as part of the IRP Docket will comprise the best solution for some, if not many, of the identified "critical" loads, and potentially "priority" and "balance" loads that exist within the most densely loaded regions of PREPA's system.<sup>26</sup> The Revised 10-Year Plan considers near-term improvements in the T&D infrastructure as a fundamental step to achieve a secure and reliable power system that will provide benefits island-wide. This system will serve in the future as a cornerstone backbone for MiniGrids areas that will be fed by renewable energy sources. At this time restoring the current T&D infrastructure, as permitted by the Final IRP Order, is an essential part of bringing much needed resiliency to the grid.

#### **D. Gas Infrastructure and Fossil Fuel Plants**

Fifth, LEO takes issue with various dispositions regarding the gas infrastructure requests and power plan projects identified by PREPA in the 10-Year Plan. As stated before, PREPA’s 10-Year Plan Motion as well as the Revised 10-Year Plan directly tackles the issues related to these projects and PREPA is committed to standing by the determinations of the Energy Bureau on this front. As thoroughly discussed in the 10-Year Plan Motion, hazard mitigation concerns require emergency backup power generation. This was evidenced after the devastating effects of Hurricane María. At the time, the existing peaking units were gradually started once the powerlines became available, creating power islands or microgrids to supply power to critical loads such as hospitals, shelters, and government emergency response centers.

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<sup>26</sup> *Id.*

With previous approval and oversight of the Energy Bureau, the FEMA allocation granted would be used for the aged, unreliable existing Frame 5 gas turbine units and these would be replaced by new simple-cycle emergency units that would provide microgrid power in case of an emergency that would prevent the effective interconnection of the whole grid. PREPA would seek the procurement of mobile units that could replace the existing Frame 5 units in their current locations. This will offer the flexibility of a temporary or permanent relocation in case of an energy emergency or for the support of transmission lines repairs. Following the Optimization Process that will be performed by the Energy Bureau, these units may be relocated to their most efficient locations for emergency and grid support duties.

#### **E. Public Participation**

Sixth, LEO cites 42 U.S.C. sec. 5165(c) for the proposition that given the fact that the 10-Year Plan includes Stafford Act funds, PREPA is required to comply with applicable federal public participation requirements. The Stafford Act is the legal mechanism that allows the Federal Emergency Management Agency (FEMA) to assist state and local governments during natural catastrophes by among others, giving the President the power to make disaster declarations during an emergency. The emergency declaration allows the President to access funds and disaster relief assistance set aside by Congress. It is in this context that the Stafford Act specifically provides that the President of the United States has the responsibility *of promoting public access* to policies governing the implementation of the public assistance program. *Emphasis supplied. 42 U.S.C. 5165c, (Sec. 325c)*, providing the parameters for public participation within the context of disaster declarations during an emergency *Sec. 325. Public Notice, Comment, And Consultation Requirements 42 U.S.C. 5165a*. This section states:

(1) IN GENERAL – The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that—

(A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this chapter; and

(B) could result in a significant reduction of assistance under the program.

This section applies only to changes *by FEMA itself*<sup>27</sup> in *FEMA's* policy governing the Public Assistance Program. Stafford Act Section 325 does not apply to and has no bearing on the process used by applicants to determine what projects should be submitted for funding under FEMA's public assistance program. Indeed, when asked if there "[i]s anything with FEMA's governing statutes, regulations or guidance that will ensure public community participation in how funds will be allocated, FEMA's Regional Administrator confirmed in his February 8, 2021 letter (attached as exhibit to LEO's Opposition at page 31) that "No, FEMA does not have such a requirement." Further, regulations cited in LEO's Opposition purporting to establish a public notice requirement are not even FEMA regulations and are inapplicable.

Moreover, LEO cites and 24 C.F.R sec. 91.320, 91.115(b)(5) alleging PREPA must comply with the preparation of an annual action plan for public comment and that all comments during that period be addressed. The Community Development Block Grant (CDBG) Program provides annual grants on a formula basis to states, cities, and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. The program is authorized under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended 42 U.S.C.-530.1 et seq. The program is designed to reinforce several important values and

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<sup>27</sup> The President has delegated to FEMA authority to implement the Public Assistance Program.

principles of community development. The CDBG law requires that a grantee must develop and follow a detailed plan which provides for, and encourages, citizen participation and which emphasizes participation by persons of low or moderate income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. The plan must provide citizens with reasonable and timely access to local meetings, information, and records related to the grantee's proposed and actual use of funds.

In Puerto Rico, the Department of Housing and Urban Development (“HUD”) introduced the eCon Planning Suite, including the Consolidated Plan template in IDIS OnLine and the CPD Maps website. HUD grantees are now required to submit their Consolidated Plan and year one Annual Action Plan using the Consolidated Plan template in IDIS OnLine. In complying with this requirement, the Puerto Rico Department of Housing (PRDOH) has developed a Citizen Participation Plan in accordance with the requirements of the HUD.<sup>28</sup> The objective of the Citizen Participation Plan is to provide Puerto Rico residents with the opportunity to provide feedback and participate in the planning and evaluation of PRDOH’s CDBG-DR and CDBG-MIT recovery programs. To facilitate citizen participation, PRDOH has coordinated actions to encourage participation and allow equal access to information on the programs. Accordingly, the Government of Puerto Rico, through the process implemented by PRDOH, is already allowing for public participation. Notwithstanding, as with the Stafford Act, there is nothing in the Housing and Community Development Act that would require PREPA to implement additional public participation processes in the decisions related to the 10-year Plan. Consequently, it is within the context of the presidential powers and not the local government or agencies that the Stafford Act

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<sup>28</sup> <https://www.cdbg-dr.pr.gov/en/citizen-participation/> Last accessed March 9, 2021.

provides guidelines for public participation in the adoption of any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under the Act. Thus, this provision does not apply and therefore does not confer any right to the public in relation to PREPA. 42 U.S.C. 5165b, (Sec. 325(b)(4)). With regards to the Housing and Community Development Act of 1974, Public Law 93-383, as amended 42 U.S.C.-530.1 et seq. the PRDOH has developed a Citizen Participation Plan in accordance with the requirements of HUD. To facilitate citizen participation, PRDOH has coordinated actions to encourage participation and allow equal access to information on the programs.<sup>29</sup>

Finally, LEO cites Act 17-2019 and Act 57-2014<sup>30</sup> indicating that both encourage public participation. However, LEO fails to identify any sections of the cited state laws that specifically applies and requires public participation as related to federal grant awards or their intrinsic standing to initiate motion practice in the case of caption without seeking intervention or prior leave of the Energy Bureau. PREPA agrees that both statutes indeed encourage public participation, and that such participation has been granted to LEO and other interested parties through the processes before the Energy Bureau including the IRP process itself<sup>31</sup>. Consequently, and as applicable to public participation, there are no additional requirements to be pursued by PREPA other than those that have already been implemented by the appropriate government entities. What is more, nothing in the federal or state laws cited by LEO jeopardizes PREPA's "eligibility" for federal funding for alleged lack of "public participation". This, as pointedly informed by FEMA itself in the February 8, 2021 response letter (p. 31 of LEO's Opposition).

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<sup>29</sup> *Id.*

<sup>30</sup> Transformation and Energy Relief Act, Act. No. 57 of May 27, 2014.

<sup>31</sup> Case No. CEPR-AP-2018-0001, November 4, 2019.

#### IV. CONCLUSION AND REQUEST FOR RELIEF

PREPA hereby requests that the Energy Bureau REJECTS LEO's Opposition and approve the Revised 10-Year Plan with a determination that it is aligned with the Final IRP Order and Modified Action Plan. PREPA cannot stress enough the importance of the Energy Bureau's Order to allow for PREPA to move forward with the capital investment projects that will form an integral part of PREPA's revitalized infrastructure and Puerto Rico's economic recovery.

In San Juan Puerto Rico, this 9<sup>th</sup> day of March 2021.

*s/ Maralíz Vázquez-Marrero*

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Exhibit A



**FEMA**

February 5, 2021

Mr. Manuel Laboy  
Executive Director  
Central Office for Recovery and Reconstruction, COR3  
Governor's Authorized Representative  
Commonwealth of Puerto Rico  
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Puerto Rico Electric and Power Authority  
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Re: FEMA-4339-DR-PR  
Puerto Rico Electric Power Authority (PREPA)  
FEMA's Accelerated Award Strategy (FAASt)

Dear Mr. Laboy and Ms. Rivera:

During the week of January 24-30, 2021, several media news outlets published articles and news releases announcing the Puerto Rico Energy Bureau (NEPR) determination that the Puerto Rico Electric Power Authority (PREPA; Applicant) 10-year Infrastructure Plan required revision.

On January 28, 2021, the Federal Emergency Management Agency (FEMA) met with PREPA and Puerto Rico's Central Office for Recovery and Reconstruction (COR3; Recipient), to discuss course-of-action progress and status following PREPA's initial workplan submittal, as required in PREPA's single fixed-cost estimate project, obligated under FEMA's Accelerated Award Strategy (FAASt).

FEMA has already received 29 project submittals from PREPA, related to the FAASt obligation, for initial development. FEMA requests that the Applicant clarify: 1) whether the NEPR request to PREPA impacts these 29 already-submitted projects; and 2) whether the NEPR request impacts the Architectural and Engineering fund disbursement process between PREPA and COR3.

In addition, COR3 submitted five (5) projects for Hazard Mitigation Grant Program (HMGP) funding on behalf of PREPA. FEMA approved two (2) projects for design, engineering and architectures for power generation at Palo Seco Generation Plant and


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Simple Cycle Gas Turbines. According to the NEPR, PREPA needs to immediately abstain from exceeding the scope and the budget allocated in the Approved Integrated Response Plan (IRP) and Modified Action Plan for the preliminary studies for a combined cycle generation plant in Palo Seco. FEMA is requesting COR3 to identify any possible impact for the approved HMGP projects and the feasibility to continue with these projects under the Puerto Rico Energy regulatory framework.

Should you have any questions concerning this matter, please contact Energy Section Chief, Israel Martínez Santiago at [israel.martinezsantiago@fema.dhs.gov](mailto:israel.martinezsantiago@fema.dhs.gov) or 202-716-8556.

Sincerely,

**JOSE G  
BAQUERO**

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José G. Baquero  
Federal Disaster Recovery Coordinator Joint  
Recovery Office Director of PR and USVI  
FEMA-4339-PR-DR/FEMA-4473-PR-DR