

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

NEPR

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IN RE: REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S 10  
YEAR INFRASTRUCTURE PLAN -  
DECEMBER 2020

CASE NO.: NEPR-MI-2021-0002

SUBJECT: OPPOSITION TO  
PREPA'S PROPOSAL TO  
CONVERT SAN JUAN UNITS 7-10  
TO BURN GAS

**RESPONSE TO PREPA'S PETITION FOR LEAVE TO CONDUCT WORKS IN  
PREPA'S STEAM UNITS TO ACHIEVE ENVIRONMENTAL REGULATORY  
COMPLIANCE**

**TO THE PUERTO RICO ENERGY BUREAU:**

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.  
- Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del  
Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río  
Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión  
de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to  
respectfully request that PREB deny the leave sought by PREPA's February 11, 2021  
Petition and prohibit PREPA from moving forward with the illegal conversion of San  
Juan Units 7-10. In support of LECO's request, LECO states as follows:

I. **PREPA’s Proposed Conversion of San Juan 7-10 Would Be A Modification of the Approved Integrated Resource Plan.**

In August 2020, the Energy Bureau issued a Final Resolution and Order in accordance with Law 17-2014 and Act 83 of May 2, 1941.<sup>1</sup> The August 2020 IRP Order set forth the actions PREPA is authorized to carry out with regard to generation assets. – nowhere does that Order allow or even contemplate conversion of San Juan Units 7-10.<sup>2</sup> In the August 2020 IRP Order, the Energy Bureau specifically considered, and rejected, PREPA’s proposal for more gas-fired generation in the San Juan area.<sup>3</sup>

PREB also explicitly stated that any PREPA procurement process regarding generation assets must be fully compliant with the August 2020 IRP Order, and prohibited PREPA from undertaking any procurement without PREB’s prior approval:

PREPA must comply with the terms and conditions of applicable regulations when conducting any competitive procurement processes performed to comply with the provisions of this Final Resolution and Order. The Energy Bureau will exercise its powers to review and guarantee that PREPA undertakes a competitive procurement process which fully complies with the goals and objectives of the Modified Action Plan, this Final Resolution and Order and all applicable laws and regulations related to procurement processes. All competitive bidding processes shall conform to the objectives and directives set forth herein.<sup>4</sup>

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<sup>1</sup> Review of the Puerto Rico Electric Power Authority Integrated Resource Plan, Resolution and Order, CEPR-AP-2018-0001, (Aug. 24, 2020) <https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>. [Hereinafter “*PREB August 2020 IRP Order*”].

<sup>2</sup> *Id.* IRP Order Modified Action Plan – Table of Components, pp. 282-284.

<sup>3</sup> *Id.* at paras.643, 659, 879.

<sup>4</sup> *Id.* at para. 844.

PREPA's proposal to allow a private entity to immediately begin conversion of San Juan Units 7-10, without any form of public procurement process, is a blatant violation of numerous terms of the PREB August 2020 IRP Order, as well as the laws and regulations on public procurement. PREPA did not submit any Request For Proposals to PREB for review (if an RFP was actually used). PREPA explains that New Fortress Energy (the company responsible for the ongoing fiasco at San Juan Units 5 & 6) would supply San Juan Units 7-10 with gas.<sup>5</sup> From New Fortress Energy's public statements, it appears that New Fortress Energy expects to handle the conversion as well:

[New Fortress Energy Managing Director Andrew Deke] added that "in Puerto Rico, we intend to convert more oil and HFO-fired power plants to natural gas..."<sup>6</sup>

PREPA acknowledges that it does not even have a ballpark figure of the conversion cost.<sup>7</sup> The utility is asking for a blank check, perhaps hoping for eventual reimbursement from the federal government.

PREPA's February 11<sup>th</sup> Petition includes a December 29, 2021 letter to EPA. That letter makes it clear that PREPA has claimed to EPA that retirement of San

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<sup>5</sup> "In the case of the San Juan Power Plant, there is nearby natural gas infrastructure, which is currently supplying the San Juan Combined Cycle units 5 and 6. This existing infrastructure can be used to supply natural gas to San Juan steam units 7, 8, 9, and 10..."

Currently, there is a natural gas supply station located adjacent to the North side of San Juan power plant, which already supplies natural gas to units 5 and 6. Further, PREPA has confirmed that there is availability to supply the natural gas volume needed by all the San Juan steam units once they are converted." PREPA Petition pp. 18, 21

<sup>6</sup> BNamericas, "New Fortress Energy eyeing new Caribbean, Mexico offtake" (March 1, 2022)

<https://www.bnamericas.com/en/news/new-fortress-energy-eyeing-new-caribbean-mexico-offtake>

<sup>7</sup> PREPA Petition p. 23: "Currently, PREPA does not have an estimate of what the conversion of SJ 7-10 will cost."

Juan Units 7-10 would be a modification of the Integrated Resource Plan but has failed to note that conversion of these units to gas would be a modification as well.

This seems contrary to the actual language of the August 2020 IRP Order; that Order contemplates retirement of San Juan Units 7-10 and sets forth terms for orderly retirement of these units; whereas it specifically considers and rejects additional gas-fired resources in the San Juan area. It appears as if PREPA is attempting to mislead EPA to make the conversion look more appealing, by claiming that retirement would require PREB approval while conversion would not. This action is in bad faith and PREB should consider sanctions or penalties under Act 57-2014 Section 6.36 for PREPA's misleading statements and attempts to evade PREB jurisdiction.

**II. PREPA Has Not Demonstrated that EPA Emission Limits Require the Conversion**

Throughout the February 11<sup>th</sup> Petition, PREPA claims that the conversion of San Juan Units 7-10 is necessary to meet federal air pollution standards imposed by the Environmental Protection Agency. This claim fails on two counts.

First, the scant information provided along with PREPA's February 11<sup>th</sup> Petition does not support the claim. The December 29, 2021 correspondence from EPA does not indicate any agency support for PREPA's claims. To the contrary, EPA instead advocates for increased integration of renewables as a better option

than conversion of San Juan Units 7-10.<sup>8</sup> PREPA next claims that two DNER studies support the proposed conversion but does not actually provide those studies.<sup>9</sup> PREB cannot take PREPA's claims at face value without reviewing the actual studies from DNER. What question did the Department's studies actually consider? What were the Department's specific conclusions? Did DNER explore any alternatives other than gas conversion? Ultimately, the proposed conversion is not a long-term solution because it merely substitutes one group of contaminants and safety hazards for another. The conversion of San Juan Units 7-10 would mean those units would continue to burn fossil fuels for years (if only to justify the investment into conversion), whereas replacing those units with rooftop solar + storage would more closely align with the August 2020 IRP Order, Puerto Rico's energy goals, and federal air pollution standards.

Second, PREPA's obligation to comply with EPA's air pollution standards does not supersede or negate PREB's ultimate authority over PREPA's decision on generation assets, and PREB's authority over PREPA's procurement processes regarding those assets.

### **III. PREB Should Reject PREPA's Sixth Collateral Attack on the Plan.**

PREPA also makes claims, unsupported by expert testimony or evidence, that the conversion is necessary for grid reliability and to integrate renewables.

PREB rejected these same tired arguments years ago in the August 2020 Final IRP

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<sup>8</sup> "We mentioned the efforts of the Department of Energy's National Renewable Energy Laboratory in having conducted feasibility studies for solar-on-closed-landfills in PR, and we committed to provide you more information, which is attached to this letter." EPA December 29, 2021 letter, Exhibit A to PREPA's Petition, at p. 1.

<sup>9</sup> PREPA Petition at P. 14

Order, yet PREPA continues to rely on them in a never-ending series of collateral attacks on the August 2020 IRP Order and noncompliance with PREB orders:

- In August 2018, PREPA issued a Request For Proposals for conversion of San Juan 5 & 6. "PREPA ... failed to take appropriate action to apprise the [Energy Bureau] of its plans or provide the [Energy Bureau] with the RFP, as required... Nor has PREPA offered any explanation for these actions, which do not comply with the approved IRP and the approved Action Plan."
- In the fall of 2019, PREPA announced the publication of a Grid Modernization Plan, which was a parallel process that PREPA set up for grid investments, outside of the Integrated Resource Plan process or PREB's jurisdiction.<sup>10</sup>
- In the spring of 2020, PREPA attempted to rush through an accelerated process to procure "temporary" gas-fired generation, again outside of the Integrated Resource Plan process.<sup>11</sup>
- In December 2020, PREPA set forth a 10-Year Infrastructure Plan, which PREB recognizes as a **"collateral attack on the Approved [Integrated Resource Plan] and Modified Action Plan and a defiance to the August 24 Resolution."**<sup>12</sup>

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<sup>10</sup> See Local Environmental Organizations' December 17, 2019 Motion, PREB Docket CEPR-AP-2018-0001; [https://energia.pr.gov/wp-content/uploads/sites/7/2019/12/LEO\\_GridMod-Motion-with-Exhibits-1.pdf](https://energia.pr.gov/wp-content/uploads/sites/7/2019/12/LEO_GridMod-Motion-with-Exhibits-1.pdf)

<sup>11</sup> PREB Docket NEPR-AP-2020-0001

<sup>12</sup> *In Re*: Review of PREPA's 10 Year Infrastructure Plan-December 2020, Resolution and Order, NEPR-MI-2020-0002, January 25, 2021 <https://energia.pr.gov/wp-content/uploads/sites/7/2021/01/20210125-MI20210002-RO-10-YR-Plan-1.pdf> (emphasis in original).

- In November 2021, PREPA acknowledged that a new gas plant at PREPA's Palo Seco location was not feasible, but proposed to keep the Palo Seco Gas Plant Feasibility Analysis monies as a slush fund to investigate a gas plant elsewhere in the San Juan area.<sup>13</sup>

PREPA's unsupported justifications for the conversion are issues to be addressed through the upcoming Integrated Resource Plan process, not piece-by-piece outside the IRP. As stated on pp. 22-23 of PREPA's February 11<sup>th</sup> Petition: these conversions, with the exception of San Juan 7, would not even start until the next Integrated Resource Plan process is complete. PREPA presents no need at all to rush through proper analysis of these proposed conversions.

**IV. PREPA has not demonstrated that the conversions are even feasible, yet suggests going forward with them immediately.**

PREPA has not demonstrated that the conversions are even feasible. The documents that PREPA provides are not full feasibility analyses, but rather brief three-page preliminary assessments from ten years ago.<sup>14</sup> Compare this to PREPA's Palo Seco gas plant analysis, where PREPA spent a year and \$1.6M on a feasibility analysis for a new Palo Seco gas plant before concluding that project was **not** feasible.

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<sup>13</sup> Motion to Submit November 2021 Status Report in Compliance with Order Entered on February 1, 2021, In Re: Preliminary Studies for New Combined Cycle Power Plant in Palo Seco, NEPR-MI-2021-0003, at Attach. 3 (Nov. 15, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/11/Motion-to-Submit-November-2021-Status-Report-in-Compliance-with-Order-Entered-on-February-1-2021-NEPR-MI-2021-0003-1-1.pdf>.

<sup>14</sup> Attachments D and E to PREPA's Petition

In Docket NEPR-MI-2021-0002, PREB emphasized that PREPA’s gas plant analyses must identify a reliable fuel source.<sup>15</sup> PREPA has repeatedly failed to do so, because there is no reliable gas supply in San Juan – New Fortress Energy’s LNG Terminal has experienced a parade of delays, contract violations, technical problems, and outages (including a four-month outage that started on October 15, 2021 and continued through January 2022.<sup>16</sup> Just over the course of six months in 2021, New Fortress Energy was forced to pay over \$14M to PREPA for contract violations and failure to provide fuel.<sup>17</sup> PREPA’s February 11<sup>th</sup> Petition proposes to **increase** reliance on New Fortress Energy’s unreliable, unaffordable LNG Terminal.

### **Conclusion**

For all the reasons detailed above, PREB should reject PREPA’s latest collateral attack on the August 2020 IRP Order and prohibit PREPA from moving forward with the illegal conversion of San Juan Units 7-10.

Respectfully submitted. In San Juan Puerto Rico, March 9 , 2022.

*/s/ Laura Arroyo*

Laura Arroyo

RUA No. 16653

Earthjustice

4500 Biscayne Blvd., Ste 201

Miami, FL 33137

T: 305-440-5436

E: larroyo@earthjustice.org

*/s/ Ruth Santiago*

Ruth Santiago

RUA No. 8589

Apartado 518

Salinas, Puerto Rico 00751

T: (787) 312-2223

E: rstgo2@gmail.com

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<sup>15</sup> In Re: Review of PREPA’s 10 Year Infrastructure Plan-December 2020, supra note 9, at 3. (“Preliminary economic, siting, permitting, and planning analysis for a CCGT should include its associated infrastructure, including but not limited to, fuel delivery infrastructure. [...] The fuel delivery infrastructure analysis specifics are of the [utmost] important to the Energy Bureau. [...]”).

<sup>16</sup> PREPA Governing Board, PREPA’s Governing Board Meeting Nov. 17, part 1 of 3, (Nov. 22, 2021), <https://www.youtube.com/watch?v=DrciDR3tEHQ&t=3036s>.

<sup>17</sup> Costs of replacement fuel from June 2021 through November 2021 total \$14,118,039.21. PREPA December 21, 2021 Motion, NEPR-MI-2020-0001; <https://energia.pr.gov/wp-content/uploads/sites/7/2021/12/Mocion-en-Cumplimiento-de-Orden-Notificada-el-17-de-Septiembre-de-2021-NEPR-MI-2020-0001-1.pdf>; <https://energia.pr.gov/wp-content/uploads/sites/7/2021/12/San-Juan-Combined-Cycle-Costs-2.xlsx>



/s/ Raghu Murthy

Raghu Murthy  
Earthjustice  
48 Wall Street, 19th Floor  
New York, NY 10005  
T: 212-823-4991  
E: rmurthy@earthjustice.org

/s/ Lorena I. Vélez Miranda

Lorena I. Vélez Miranda  
RUA No. 22720  
Earthjustice  
151 Calle de San Francisco  
Ste 200 PMB 0528  
San Juan, PR 00901-1607

/s/ Pedro Saadé

Pedro J. Saadé Lloréns  
Colegiado Núm. 5452  
RUA No. 4182  
Calle Condado 605, Office 611  
San Juan, Puerto Rico 00907  
Tel. & Fax (787) 948-4142  
E: pedrosaade5@gmail.com

/s/ Rolando Emmanuelli Jiménez

Rolando Emmanuelli-Jiménez  
RUA No. 8509  
E: rolando@bufete-  
emmanuelli.com;  
notificaciones@bufete-  
emmanuelli.com

/s/ Jessica Méndez-Colberg

Jessica Méndez-Colberg  
RUA No. 19853  
E: jessica@bufete-  
emmanuelli.com  
472 Tito Castro Ave.  
Marvesa Building, Suite 106  
Ponce, Puerto Rico 00716  
Tel: (787) 848-0666  
Fax: (787) 841-1435

**CERTIFICATION OF SERVICE**

I hereby certify that on March 9, 2022, I served this *Response* to the following parties: secretaria@energia.pr.gov; margarita.mercado@us.dlapiper.com; laura.rozas@us.dlapiper.com; mvazquez@diazvaz.law; and kbolanos@diazvaz.law;

*/s/ Laura B. Arroyo*

Laura B. Arroyo

RUA No. 16653

Earthjustice

4500 Biscayne Blvd.

Suite 201

Miami, FL 33137

T: 305-440-5436

E: larroyo@earthjustice.org;