

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

<b>NEPR</b>  <b>Received:</b>  <b>Aug 29, 2022</b>  <b>5:11 PM</b>
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**IN RE: PUERTO RICO ELECTRIC  
POWER AUTHORITY INTEGRATED  
RESOURCE PLAN**

**CASE NO.: CEPR-AP-2018-0001**

**SUBJECT: DETERMINATION  
FOR THE ESTABLISHMENT OF A  
P3 FOR A NEW CCGT WHICH  
CAN BE CONVERTED TO BURN  
HYDROGEN AT ANY LOCATION  
IN PUERTO RICO.**

**LECO’S MOTION TO SET ASIDE THE AUGUST 3rd ORDER IN  
DOCKET NEPR-MI-2021-0003**

**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”), and request relief from PREB’s August 3rd Resolution and Order, in accordance with Regulation 8543 Section 11.02. In support of LECO’s request, LECO respectfully states as follows:

In the August 2020 approved Integrated Resource Plan (IRP), PREB rejected a gas-fired plant as part of a least-cost plan<sup>1</sup>, but nevertheless “out of an abundance

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<sup>1</sup> Puerto Rico Energy Bureau, *Resolution and Order regarding Motion to Submit November 2021 Status Report in Compliance with Order Entered on February 1, 2021; Motion to Submit December*

of caution” authorized a strictly limited investigation into a gas plant at PREPA’s Palo Seco site. This was intended to be a hedge, “to protect against the uncertainty of near-future solar PV and battery energy storage price outcomes, or other potential reliability concerns...”<sup>2</sup>

In the two years since then, despite delays and obstacles by PREPA and LUMA, Puerto Ricans have installed at least 36,000 net metered rooftop solar systems, providing 191 MW of capacity.<sup>3</sup> This does not include systems that are not net metered. Taking all systems into account, conservative news estimates suggest that Puerto Ricans’ rooftop solar & storage systems have at least 315 MW of generation capacity and 300 MW of storage capability.<sup>4</sup> In addition, PREB expects to add a Virtual Power Plant and 507 MW of storage before the end of 2024.<sup>5</sup> This is just the beginning of Puerto Rico’s rooftop solar + storage revolution: experts from the National Renewable Energy Laboratories recently concluded that solar resources on

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*2021 Status Report in Compliance with Order filed by the Puerto Rico Electric Power Authority; and Determination for the establishment of a P3 for a new CCGT which can be converted to burn hydrogen at any location in Puerto Rico* at 1, Dkt. No. NEPR-MI-2021-0003 (Aug. 3, 2022), (“Through the Approved IRP, the Energy Bureau concluded that PREPA did not support the inclusion of a new gas-fired combined cycle (CC) unit at Palo Seco by 2025 as part of a least cost plan.”) [Hereinafter PREB August 3rd Order].

<sup>2</sup> *Id.*

<sup>3</sup> LUMA, *Motion Submitting Interconnections Progress Report for May Through July 2022 and Presentation for Next Compliance Hearing*, Dkt. No. NEPR-MI-2019-0016 (Aug. 15, 2022).

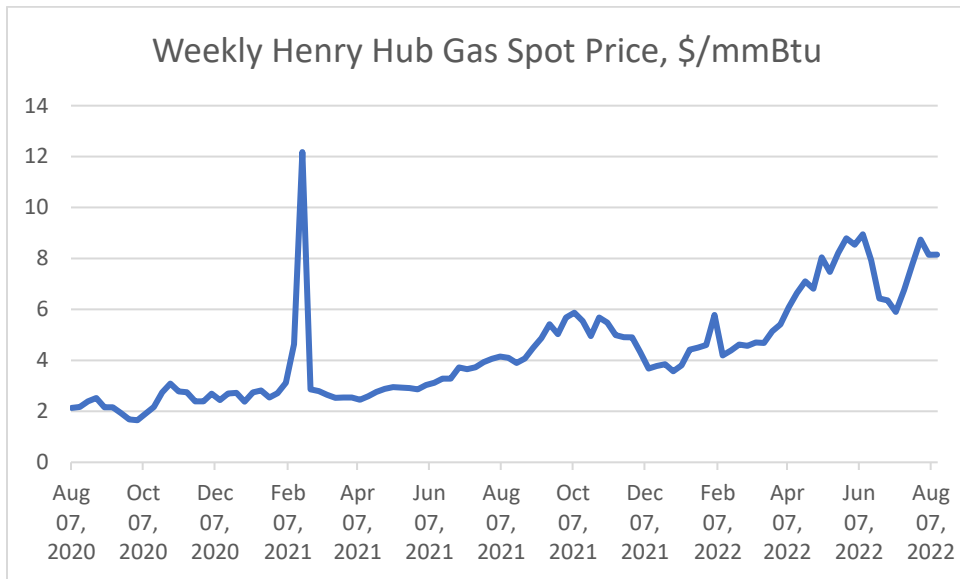
<sup>4</sup> Jacqueline Glattard, Gerson Beauchamp y Arturo Massol Deyá, *The Energy Insurrection: Analysis of Net Metering in Puerto Rico (2014-2022)* at 4-5 (May 23, 2022), <https://casapueblo.org/wp-content/uploads/2022/05/scientific-technical-report.pdf>;

Jim Wyss, *Why Tiny Solar Projects Play an Outsized Role in Powering Puerto Rico*, Bloomberg, (May 31, 2022) <https://www.bloomberg.com/news/articles/2022-05-31/how-home-solar-power-protects-puerto-rico-from-blackouts>.

<sup>5</sup> PREB August 3rd Order at 1.

Puerto Rico’s residential rooftops alone have more than 20 GW of technical potential – far more than enough to power the entire Puerto Rico grid.<sup>6</sup>

Meanwhile, price and reliability concerns have emerged, not for distributed renewables but rather for gas plants. Gas prices have quadrupled since PREB approved the IRP in August 2020:



Source: U.S. Energy Information Administration<sup>7</sup>

The New Fortress Energy LNG Terminal, the only fuel source for a gas plant in the San Juan area, has been plagued with legal and operational problems. Outages at the LNG Terminal sometimes stretch months.<sup>8</sup> Even when New Fortress’ facility

<sup>6</sup> Residential rooftop solar PV potential for Puerto Rico from Mooney and Waechter (2020); Meghan Mooney and Katy Waechter, Puerto Rico Low-to-Moderate Income Rooftop PV and Solar Savings Potential, The Nat’l Renewable Energy Laboratory, (Dec. 17, 2020). <https://www.nrel.gov/docs/fy21osti/78756.pdf>; See also Puerto Rico Grid Resilience and Transitions to 100% Renewable Energy Study (PR100): Six-Month Progress Update at 53 (July 2022), <https://www.nrel.gov/docs/fy22osti/83431.pdf>.

<sup>7</sup> U.S. Energy Information Adm., Henry Hub Natural Gas Spot Price <https://www.eia.gov/dnav/ng/hist/rngwhhdW.htm> (Last accessed on Aug. 26, 2022).

<sup>8</sup> Negociado de Energía en vivo, NEPR-MI-2020-0001 Conferencia Técnica Virtual at 33:24 YouTube (Dec. 22, 2021) <https://www.youtube.com/watch?t=2004&v=jGCwhX0bKdM&feature=youtu.be>.

is operational, New Fortress often “optimizes” its profits by choosing to sell its LNG on the international spot market, forcing PREPA to turn back to diesel or oil.<sup>9</sup> And the location that PREPA itself highlighted as the best one for a gas plant – the Palo Seco site – turned out to be incompatible with a gas plant.<sup>10</sup>

In light of the price and reliability concerns at Puerto Rico’s gas plants, it was surprising to see that PREB’s August 3<sup>rd</sup> Order stated a need to “determine the costs and timeframe of availability of a new combined cycle gas turbine, to gauge the current market trends for resource costs, and compare against the costs of ongoing solar PV and battery energy resource deployment...”<sup>11</sup> The Legislature requires that type of resource comparison—“[a]n evaluation of the range of conventional and non-conventional generation technologies available in the market”—to be examined within PREB’s IRP process.<sup>12</sup> Accordingly, LECO respectfully requests that PREB set aside its order to begin a Request For Proposals process in investigatory docket NEPR-MI-2021-003. If PREB seeks such an evaluation, it should require an All-Source Request For Information as part of the new Integrated Resource Plan proposal that PREPA and LUMA are preparing, within a public docket where interested parties – such as LECO – may intervene.

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<sup>9</sup> New Fortress Energy Inc., *Form 10-Q*, U.S. Sec. and Exch. Comm’n, (May 5, 2022) <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001749723/000174972322000010/nfe-20220331.htm>.

<sup>10</sup> PREPA, *Motion for Reconsideration and to Set Aside Order for Want of Jurisdiction* at 7, Dkt. No. NEPR-MI-2021-0003 (Aug. 23, 2022) (“The Feasibility Study concluded that moving forward with a new combined cycle . . . was not feasible. Therefore, PREPA decided it would not proceed with the Palo Seco CC”).

<sup>11</sup> PREB August 3<sup>rd</sup> Order at 7.

<sup>12</sup> Law 17-2019 Section 1.9(3)(c).

In Section I of this motion, LECO explains why issuance of an RFP for a gas plant is inconsistent with the IRP and deprives LECO and other Puerto Ricans of their right to participate in the archipelago's energy planning process. In Section II, LECO sets forth terms and conditions that must be included in an All-Source Request for Information, should PREB decide to require one in a new IRP process. In Section III, LECO sets forth a number of reasons why PREB would be wiser to simply shut the door on PREPA's obsession with gas plants, and instead embrace the rooftop solar + storage revolution that is already underway.

The Puerto Rico Department of Housing ("PRDOH" or "Vivienda") has set aside \$500M for distributed solar and storage in its CDBG-MIT Action Plan. PREPA has taken one small step in the right direction, with its \$34.7M rooftop solar + storage project in Utuado, Lares, and Adjuntas.<sup>13</sup> If PREB ordered PREPA to direct its own federal funding to distributed solar and storage, the available funding could develop enough distributed generation to power the entire archipelago. In short, funding and technical potential abound for Puerto Rico to reinvent its electricity system as a decarbonized, decentralized, and reliable grid, and that is the path PREB should direct PREPA to follow.

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<sup>13</sup> PREPA, *Motion to Inform Reallocation of FEMA 404 HMGP Funds and Request for Approval of Generation Projects* at 19, Dkt. No. NEPR-MI-2021-0002 (Aug. 2, 2022) [Motion-to-Inform-Reallocation-of-FEMA-404-HMPG-Funds-and-Request-for-Approval-of-Generation-Projects-NEPR-MI-2021-0002-1.pdf](#).

**I. A Request For Proposals for a New Gas Plant is Inconsistent with the Approved IRP and Would Require a Modification, with Public Participation and Public Notice to all parties that Were Involved with the IRP.**

PREB's August 3<sup>rd</sup> Order described PREB's desire for a comparison of the costs and availability of different energy resources, but a Request For Proposals is not the right tool to obtain that comparison. An RFP for a new gas plant goes beyond an attempt merely "to ascertain the costs and availability of such new resources at different locations on the Island ...."<sup>14</sup> Rather, a Request For Proposals is an action taken to obtain new generation. As PREB's August 3<sup>rd</sup> Order explains, "[a] central point throughout the legislation is that actions taken regarding generation ... must conform to the approved IRP..."<sup>15</sup> An RFP, as defined by the Legislature in Law 27-2019 Section 2.6(w) and Law 120-2018 Section 11, is not intended just to ascertain costs, but rather to actually obtain resources: "to develop, finance, build, operate, and provide maintenance, in whole or in part, to the electric power grid and the power plants, and other facilities and infrastructure thereof, as well as to promote new generation, transmission, distribution, customer service optimization projects, and any other necessary project consistent with the Integrated Resource Plan." After extensive analysis, PREB approved, through the IRP, the "combination of energy supply resources and conservation that satisfies, in the short-, medium-, and long-term, the current and future needs of Puerto Rico's energy system and of its

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<sup>14</sup> PREB August 3<sup>rd</sup> Order at 7.

<sup>15</sup> *Id.* at 4; Act 17-2019, §1.9(2).

customers at the lowest reasonable cost.”<sup>16</sup> Development, financing, construction, or operation of a new resource that was never considered in the approved IRP, would obviously interfere with this portion of the IRP. And PREPA’s recent submission is clearly interpreting the RFP as an order to build a new gas plant:

On August 3rd, 2022, PREB entered a Resolution and Order directing Puerto Rico Public-Private Partnerships Authority (P3) to open a request for proposals (RFP) for a new combined cycle gas turbine (CCGT). ...

On August 3rd, 3033, PREB entered a Resolution and Order directing P3 to conduct an RFP for a new CCGT, which shall also be dual burning for natural gas and hydrogen or to be converted to burn hydrogen, at any location in Puerto Rico.<sup>17</sup>

PREB’s August 3rd Order states that “the Modified Action Plan does not exclude the use of competitive processes to obtain new gas-fired or other thermal resources.” LECO respectfully responds that the Modified Action plan actually allows competitive processes to obtain *only the 88 MW* of gas-fired peaker plants that were explicitly authorized by the approved IRP. Unless PREB revises or limits its order for a Request for Proposals, LECO sees a significant risk that PREPA will use the RFP as “a procurement process for a ...supply-side resource that was not previously included as part of an approved IRP.”<sup>18</sup> That would clearly constitute an unlawful modification of the approved IRP. At the very least, LECO requests that PREB make

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<sup>16</sup> Act 17-2019 Section 1.9(2).

<sup>17</sup> PREPA, *Motion to Submit the August 2022 Status Report and Evidence of Compliance with the August 3rd Order*, Dkt. No. NEPR-MI-2021-0003 (Aug. 15, 2022) <https://energia.pr.gov/wp-content/uploads/sites/7/2022/08/Motion-to-Submit-the-August-2022-Status-Report-and-Evidence-of-Compliance-with-the-August-3-Order-NEPR-MI-2021-0003-1.pdf>.

<sup>18</sup> Regulation 9021, Section 2.05(A)(2).

it clear that PREPA and P3 do not have authority to actually procure a new gas plant, and direct that any market-sounding RFP must explicitly communicate this fact.

As a modification to the approved IRP, an RFP for a new gas plant would require a full plan review process<sup>19</sup>, which requires additional procedural steps not taken here. For example, Law 57-2014 (article 6.23 (c)) states that the Energy Bureau may only modify the approved IRP “in collaboration with the Commonwealth Energy Public Policy Office, the Independent Consumer Protection Office, and the comments of interested persons and organizations...” In this case, the Energy Public Policy Office or the Independent Consumer Protection Office did not receive notice of PREB’s August 3rd Order. Neither did the public, or the interested persons and organizations that actively participated in the 2020 IRP process. Modification of that IRP would not be valid without notice and opportunity to comment to the Energy Public Policy Office, the ICPO, the public, and the parties that intervened in the 2020 Integrated Resource Plan docket. Moreover, PREB issued the August 3rd Order in a docket where these parties’ intervention and participation rights may be quite limited. A Request For Proposals for new resources, as a modification of the IRP, may only be ordered in a docket where parties have full intervention and participation rights. A Request For Proposals for new resources issued in an investigative docket, without proper public notice and opportunity to participate, violates the Due Process rights of stakeholders and PREPA customers.

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<sup>19</sup> Law 17-2019 states that the approved IRP cannot be modified until “plan review process is thus carried out before the Bureau and evidence thereof is furnished.” Section 1.9(4).



**II. Any All-Source Request For Information for the Next IRP Must Obtain Accurate Up-To-Date Pricing and Availability for All Resources, and Provide Specifics for Each Resource.**

PREB's August 3<sup>rd</sup> Order recognized a need to compare cost and availability information for all resource types. The appropriate tool for that is an All-Source Request For Information, that can be incorporated into the upcoming IRP process. The All-Source Request For Information must include several specific items, detailed below, for an accurate resource comparison.

First, any resource comparison's analysis of distributed renewables + storage must incorporate the impact of the more than \$500M that HUD and FEMA disaster recovery and mitigation funds have set aside for those resources.

On gas resources, in order to provide accurate information about a viable option, any resource comparison developed in the new IRP process must include discussion of how the gas plant would overcome the challenges that Puerto Rico gas plants have faced. PREB's August 3<sup>rd</sup> Order described some of these already: gauging the current market trends for resource costs, and the problem of finding a new location for the plant, since PREPA has already ruled out the Palo Seco site and noted challenges with sites adjacent to the San Juan Power Plant.<sup>20</sup> In addition, any resource comparison must explain:

- How can the gas plant ensure a steady and reliable supply of gas?

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<sup>20</sup> PREPA, *Motion to Submit Feasibility Study and July 2022 Status Report* (July 15, 2022) <https://energia.pr.gov/wp-content/uploads/sites/7/2022/07/20220715-Motion-to-Submit-Feasibility-Study-and-July-2022-Status-Report.pdf>.

- Experts have observed that fossil fuel plants were unable to obtain fuel after natural disasters: “...following Hurricane María, many roads were impassable, and it was impossible to get fuel to generation stations and some communities.”<sup>21</sup> LNG tankers have not been able to supply Puerto Rico’s LNG import terminals immediately before, during, or after storms.<sup>22</sup> Will the proposed gas plant also face problems obtaining fuel immediately before or after storms or disasters?
- How much will Puerto Ricans have to pay for gas, given worldwide LNG volatility?
- What are the health and safety impacts that Puerto Ricans would suffer from adding a gas plant instead of distributed renewable resources?
- What are the impacts to Puerto Rico’s contribution to climate change, from adding a gas plant instead of distributed renewable resources?
- Law 17-2019 prohibits fossil fuel burning past 2050. Therefore, a gas plant built in connection with this RFP would be forced to shut down well before the end of its useful life, leaving it as a stranded asset. How would gas plant proponents account for that the unpaid remaining book value for the plant?

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<sup>21</sup> Puerto Rico Dep’t of Housing, Puerto Rico Mitigation Action Plan July 2022 draft at 122, <https://cdbg-dr.pr.gov/en/download/cdbg-mit-action-plan-amendment-1-substantial-draft-for-public-comment-july-12-2022/> [Hereinafter “Vivienda Action Plan”].

<sup>22</sup> For example, on August 21, 2020, the JS Ineos Independence fled the San Juan Harbor in the incoming Tropical Storm Laura. See Vesselfinder.com, JS INEOSINDEPENDENCE, <https://www.vesselfinder.com/vessels/JSINEOSINDEPENDENCE-IMO-9744960-MMSI-249652000>. See also the New Fortress Energy Q2 2020 10-Q filing with the Securities & Exchange Commission, at 49: “If one or more tankers, terminals, pipelines, facilities, equipment or electronic systems that we own, lease or operate or that deliver products to us or that supply our facilities and customers’ facilities are damaged by severe weather ... our operations and construction projects could be delayed and our operations could be significantly interrupted.”

- If gas plant proponents wish to propose hydrogen as a fuel option for the plant, they must provide detailed information on how that would be viable:
  - What would be the source of hydrogen to be burned at the CCGT?  
What would be the cost? Where would it be stored?
  - What are the methods to address safety risks from hydrogen production, storage, and transport?
  - What would be the cost of energy produced by burning hydrogen at the CCGT?
  - Can PREPA commit to only using renewable hydrogen?
  - How will higher NOx emissions from burning hydrogen be addressed?

**III. Proponents of Gas Plants Should Respond to the Measured Conclusions of President Aviles and Other Puerto Rico Agencies, That Gas is a False Solution That Has No Place in the Future of Puerto Rico’s Grid.**

LECO also urges PREB not to seek pricing and availability for a gas plant at all in the new IRP process. PREB’s President, Cmmr. Avilés-Deliz, has already examined the recent trends in pricing and availability of renewables compared to gas, and rejected the myth of gas as a “bridge fuel”:

*El resultado es que hoy, la generación con paneles fotovoltaicos en combinación con el almacenaje de energía en baterías supone un método tan confiable como el uso de plantas termoeléctricas, más económico y mucho más limpio. No tenemos ya que esperar al futuro ni buscar un puente para llegar a él.*

*La organización TransitionZero reconoció esta nueva realidad en días recientes cuando uno de sus estudios concluyó que es hoy “más barato cambiar de carbón a renovables, que de carbón a gas natural”.*

*En segundo lugar, invertir fondos públicos hoy en proyectos de gas natural a **través de todo Puerto Rico nos amarraría a otro combustible fósil por al menos una década.** De nuevo, esa estrategia hacía sentido hace 15 años, pero ya hoy tenemos que actualizarla frente al cambio que precisamente anticipábamos cuando originalmente se propuso.*

*Finalmente, Puerto Rico está obligado a un cambio en las tecnologías que utiliza para generar electricidad por el daño ambiental que produce nuestro sistema actual.<sup>23</sup>*

Experts at the Puerto Rico Department of Housing have studied the Puerto Rico grid and independently reached the same conclusion: Puerto Rico should completely end its addiction to imported fossil fuels. They conclude that “a Puerto Rico that is dependent on sustained external support to function: foreign investment, imported fuel, and imported food, [all of which] rely on complex supply chains with many potential points of failure. . . . cannot be called resilient.”<sup>24</sup> Rather, “[t]he future resilience of Puerto Rico may rely on rooting the Island’s systems in its own communities: supporting the development of local resources that do not rely on complex supply chains which have proven to be fragile during disasters.”<sup>25</sup> PRDOH further concludes that switching from one fossil fuel to another (Liquefied Natural Gas) is a false solution:

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<sup>23</sup> Edison Avilés Deliz presidente del Negociado de Energía, *No hace falta desviarnos hacia el gas natural*, El Vocero de Puerto Rico (July 7, 2022) (emphasis added),

[https://www.elvocero.com/opinion/columnas/no-hace-falta-desviarnos-hacia-el-gas-natural/article\\_9f9bcbf2-fd97-11ec-a886-93c51e4cde08.html](https://www.elvocero.com/opinion/columnas/no-hace-falta-desviarnos-hacia-el-gas-natural/article_9f9bcbf2-fd97-11ec-a886-93c51e4cde08.html). See also Negociado de Energía de Puerto Rico @EnergiaNEPR, Twitter (July 7, 2022, 11:06 AM), [https://twitter.com/EnergiaNEPR/status/1545061787472498688?s=20&t=w2OZWaDbOVk\\_UhCJPGY5Ng](https://twitter.com/EnergiaNEPR/status/1545061787472498688?s=20&t=w2OZWaDbOVk_UhCJPGY5Ng).

<sup>24</sup> Vivienda Action Plan at iii.

<sup>25</sup> *Id.*

A plan to switch from petroleum to LNG as an interim measure before investing in renewables ... would not solve the problem of Puerto Rico's energy dependence, nor the problem of transporting fuels by truck when roads are down. .... This also does not solve the problem of rising prices which already comprise sixty percent (60%) of PREPA's operating cost and cause Puerto Rico to pay higher fuel prices than the other forty-eight (48) states.<sup>26</sup>

Finally, LECO asks PREB to consider that the delay in renewables acquisition is actually being **caused** by PREPA's focus on gas plants. At the January 2020 IRP hearing, an OIPC expert warned that if PREPA was allowed to investigate a gas plant, PREPA "might underperform in its acquisition of efficiency and renewables that then might result in needing to fall back on fossil fuel generation."<sup>27</sup> Two years later, PREB finds that is exactly what happened:

PREPA ... informed the Energy Bureau that the feasibility study would be completed on May 15, 2021. The last report filed by PREPA ... indicates that such report shall be filed July 15, 2022. This is ... a 14-month delay. Such has resulted in planned integration of renewables and battery energy storage projections to the generation fleet to be delayed.<sup>28</sup>

### **Conclusion**

For the reasons stated above, LECO respectfully requests that PREB set aside its August 3<sup>rd</sup> Order in NEPR-MI-2021-0003.

Respectfully submitted. In San Juan Puerto Rico, August 29, 2022.

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<sup>26</sup> *Id.* at 123.

<sup>27</sup> Negociado de Energía en vivo, *Evidentiary Hearing / CEPR-AP-2018-0001*, YouTube (Feb. 4, 2020), <https://youtu.be/-RXb0bf5ScY?t=5950>.

<sup>28</sup> PREB August 3<sup>rd</sup> Order.

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(\*) Admitted to practice in Dkt. No. CEPR-AP-2018-0001 and Dkt. No. NEPR-AP-2020-0025.

## CERTIFICATION OF SERVICE

We hereby certify that, on August 29, 2022, we have filed this Motion via the Energy Bureau's online filing system, and sent to the Puerto Rico Energy Bureau Clerk to: [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov) and to the following parties:

- PREPA ([mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law); [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law); [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com); [jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com); [n-vazquez@aeepr.com](mailto:n-vazquez@aeepr.com); [c-aquino@prepa.com](mailto:c-aquino@prepa.com))
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