

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

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| <p>NEPR</p> <p>Received:</p> <p>Sep 18, 2019</p> <p>4:00 PM</p> |
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IN RE:

REVIEW OF THE PUERTO RICO ELECTRIC
POWER AUTHORITY INTEGRATED
RESOURCE PLAN

CASE NO.:

CEPR-AP-2018-0001

MOTION FOR CHANGE OF STATUS TO INTERVENOR

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

AES-Puerto Rico, L.P., (“AES-PR”) respectfully requests a change of status from *amicus curiae* to intervenor, as follows:

1. On August 1, 2019, AES-PR moved to participate in this case as *amicus curiae*.
2. On that same date, the Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution granting AES-PR’s petition, holding that AES-PR met the requirements set forth in the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures of December 18, 2014 (“Regulation No. 8543”). More significantly, it also held that AES-PR met the requirements set forth in Sections 3.5 and 3.6 of the Uniform Administrative Procedure Act, which regulate requests for intervention in administrative proceedings. See Resolution with Subject: Request to Participate as *Amicus Curiae*; AES- Puerto Rico, dated August 1, 2019, pages 1-2.
3. Given that the Energy Bureau already ruled that AES-PR meets the requirements to intervene, AES-PR requests a change of status from *amicus curiae* to intervenor. AES-PR requests that now because the the Draft for the Review of the Puerto Rico Energy Bureau submitted by Siemens Industry and the technical hearings held last week have clarified the extent to which AES-PR’s economic interests may be affected by these proceedings.

4. Once the administrative adjudicative process is activated, a person not originally deemed a party may submit a request to intervene in the proceedings. Claro TV y Junta Regl. Tel. v. One Link, 179 DPR 177, 208 (P.R. 2010); Asoc. Residentes v. Montebello Dev. Corp., 138 DPR 412, 420 (P.R. 1995). The request must be filed in writing, well grounded, and show that the person has standing and a legitimate and substantial interest in the proceedings. Claro TV y Junta Regl. Tel. v. One Link, *supra*, page 208. In order to be considered, a motion to intervene must also include evidence of the factors set forth in Sec. 3.5 of the U.A.P.A., 3 L.P.R.A. sec. 2155. *Id.* These factors are:

- (a) The petitioner's interests may be adversely affected by the adjudicative procedure;
- (b) the petitioner has no other legal means of adequately protecting his or her interests;
- (c) the petitioner's interests are not adequately represented by other parties to the procedure;
- (d) the petitioner's participation may help in preparing a more complete record;
- (e) the petitioner represents or is the spokesperson of other groups or entities in the community;
- (f) the petitioner can contribute information, expertise, specialized knowledge or technical advice that would not be available otherwise in the procedure; and
- (g) the petitioner's participation will not unnecessarily extend or delay the procedure. Sec. 3.5 of the U.A.P.A, *supra*.

5. These factors must be construed liberally, in line with the flexible nature of administrative proceedings. JP Plaza Santa Isabel v. Cordero Badillo, 177 DPR 177, 192-193 (P.R. 2009); San Antonio Maritime v. P.R. Cement, 153 DPR 374, 392 (P.R. 2001). AES-PR meets, and in fact exceeds that standard. Indeed, the Energy Bureau already determined as such in its August 1, 2019 Resolution. The following further supports that determination.

6. AES-PR is a subsidiary of The AES Corporation, which has propelled the growth of the energy sector in different parts of the world and is dedicated to improving lives by seeking an energy future that is safer and more ecological. As AES-PR stated in its request to participate as amicus curiae, AES-PR established the first coal-fired centralized power plant in Puerto Rico. To date, AES-PR provides approximately 17% of the electricity that is consumed in Puerto Rico. AES-PR is currently the least expensive electricity provider in Puerto Rico, to the point where it has rendered savings of millions of dollars for the Puerto Rico Electric Power Authority (“PREPA”) and its clients.

7. Effective October 11, 1994, PREPA and AES-PR executed the “Power Purchase and Operating Agreement between AES Puerto Rico, L.P. and Puerto Rico Electric Authority” (“Purchase and Operating Agreement”). The Purchase and Operating Agreement will be in effect until November 29, 2027, and it holds that, during its term, AES-PR will sell exclusively to PREPA the Dependable Capacity and Energy it produces. Article 20.1(c) of the Purchase and Operating Agreement states that the Agreement may be extended for an additional period of 25 years. Thus, AES-PR possesses an economic interest that may be affected by the evaluation and implementation of the Puerto Rico Electric Authority Integrated Resource Plan (“IRP”) currently under consideration.

8. If AES-PR’s request to intervene is not granted, it would not be able to participate in these proceedings in a manner afforded to those entities that possess interests that may be affected by the Energy Bureau’s final decision. Indeed, a denial would be contrary to the public policy established by the Supreme Court of Puerto Rico relating to the integration of parties in quasi-judicial procedures, which warrants flexibility. See, San Antonio Maritime, 153 DPR at 392. In conformity with this public policy, the Supreme Court has held that “[o]nce a person or entity becomes an intervenor, the law recognizes that such entity has standing to request judicial review of the final determination, if that determination adversely affects that entity.” See, Fund. Surfrider y otros v. A.R.Pe., 178 DPR 563,

581 (P.R. 2010) (referencing Junta Dir. Portofino v. P.D.C.M., 173 DPR 455 (P.R. 2008); Lugo Rodríguez v. J.P., 150 DPR 29 (P.R. 2000)). Hence, as an intervenor, AES-PR would be able to request reconsideration and judicial review if certain requirements are met. Sec. 11.01 of Regulation No. 8543. It could not seek reconsideration or move for judicial review as a mere *amicus*.

9. Absent intervention, AES-PR has limited and inadequate means of protecting its economic interests in these proceedings. AES-PR's current status as *amicus curiae* limits its participation. And none of the parties in this case, aside from PREPA, are parties to the Purchase and Operating Agreement.

10. Additionally, as an intervenor, AES-PR would serve as a more useful source of information for the Energy Bureau. AES-PR can contribute its expertise, specialized knowledge and technical advice that may otherwise not be available to the Energy Bureau, and contest or otherwise refute misleading or ill-founded information.

11. Finally, since AES-PR possesses an economic interest that may be affected by the outcome of these proceedings and its participation will undoubtedly aid the Energy Bureau, AES-PR's participation as intervenor would not unnecessarily extend or delay these proceedings.

12. AES-PR is mindful that the deadline set by the Energy Bureau to intervene elapsed. Given the very early stages of this proceeding, no prejudice to any other participant will occur from granting a change in status from *amicus curiae* to intervenor. As noted, the Energy Bureau has already found that AES-PR has standing and fulfills the requirements to participate in this proceeding. Granting this motion is also consistent with policies enunciated by the Supreme Court of Puerto Rico to allow intervention even in much later stages of a proceeding. Montebello Dev. Corp., 138 DPR at 422 (holding that an entity with a legitimate interest should have been granted intervention

even after the decision was rendered by the agency so that the intervenor could seek reconsideration of the decision); San Antonio Maritime, 153 DPR at 398-400 (same).

For the reasons above, AES-PR requests that the Puerto Rico Energy Bureau grant this motion for change of status from *amicus curiae* to intervenor.

RESPECTFULLY SUBMITTED.

CERTIFICATE OF SERVICE

We certify that on this date we have electronically filed this document with the Puerto Rico Energy Bureau via <https://radicacion.energia.pr.gov>; and a courtesy copy of the filing was sent via e-mail to: kbolanos@diazvaz.law; astrid.rodriguez@prepa.com; jorge.ruiz@prepa.com; nitza.vazquez@prepa.com; carlos.aquino@prepa.com; rtorbert@rmi.org; victorluisgonzalez@yahoo.com; corey.brady@weil.com; presidente@ciapr.org; secretaria@energia.pr.gov; csanchez@energia.pr.gov; ireyes@energia.pr.gov; asanz@energia.pr.gov; bmulero@energia.pr.gov; nnunez@energia.pr.gov; gmaldonado@energia.pr.gov, viacaron@energia.pr.gov; wcordova@energia.pr.gov; legal@energia.pr.gov; sugarte@energia.pr.gov; sierra@arctas.com; tonytorres2366@gmail.com; cfl@mcvpr.com; gnr@mcv.com; info@liga.coop; amaneser2020@gmail.com; hrivera@oipc.pr.gov; jrivera@cnslpr.com; carlos.reyes@ecolectrica.com; ccf@tcmrslaw.com; manuelgabrielfernandez@gmail.com; acarbo@edf.org; pedrosaade5@gmail.com; rmurthy@earthjustice.org; rstgo2@gmail.com; larroyo@earthjustice.org; jluebkemann@earthjustice.org; acasellas@amgprlaw.com; loliver@amgprlaw.com; epo@amgprlaw.com; robert.berezin@weil.com; marcia.goldstein@weil.com; jonathan.polkes@weil.com; gregory.silbert@weil.com; agraitfe@agraitlawpr.com; maortiz@lvprlaw.com; rnegron@dnlawpr.com; castrodiappalaw@gmail.com; voxpopulix@gmail.com; paul.demoudt@shell.com; javier.ruajovet@sunrun.com; escott@ferraiuoli.com; mgrpcorp@gmail.com; aconer.pr@gmail.com; rtorbert@rmi.org.

In San Juan, Puerto Rico, on September 18, 2019.

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