

**COMMONWEALTH OF PUERTO RICO  
PUERTO RICO ENERGY COMMISSION**

**IN RE:** INTEGRATED RESOURCE PLAN FOR  
THE PUERTO RICO ELECTRIC POWER  
AUTHORITY

**CASE NO.:** CEPR-AP-2015-0002

**SUBJECT:** Windmar's Motion for  
Reconsideration.

**RESOLUTION**

Through this Resolution, the Puerto Rico Energy Commission ("Commission") rules on the Motion for Reconsideration filed on October 13, 2016 by PVP Properties, Inc., Coto Laurel Solar Farm, Inc., Windmar PV Energy, Inc., y Windmar Renewable Energy, Inc. (collectively, "Windmar").

**I. Brief Procedural Background**

On July 7, 2015, the Puerto Rico Electric Power Authority ("PREPA") filed before the Commission its first ever Integrated Resource Plan ("IRP"). On July 29, 2015, Windmar filed a motion to intervene, which was approved by the Commission on September 4, 2015. On September 26, 2016, the Commission issued its Final Resolution and Order through which it disapproved PREPA's proposed IRP, approved a Modified IRP and required PREPA to adopt said Modified IRP, provide certain information required by the Commission and develop and execute internal procedures for guaranteeing that future IRP proposals comply with all legal requirements and satisfy prevailing energy industry planning standards.

On October 13, 2016 Windmar filed a *Motion for Clarification and/or to Reconsider the Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority* ("Motion for Reconsideration"). In essence, Windmar requests the Commission to reconsider certain portions of its Final Resolution and Order and incorporate a number of "changes or clarifications" to the directives and decisions made by the Commission therein.

On October 26, 2016, the Commission notified it would consider Windmar's Motion for Reconsideration on its merits. On December 13, 2016, the Commission extended the term for issuing a final resolution regarding Windmar's Motion until February 10, 2017.

## II. Windmar's Motion for Reconsideration

Through its Motion for Reconsideration, Windmar requests a series of “changes or clarifications” to the Commission’s Final Resolution and Order. According to Windmar, such changes would “benefit PREPA’s restructuring and Puerto Rico’s energy needs.”<sup>1</sup> Windmar further argues that such changes are needed to remove entry barriers for new technologies and a greater integration of renewable energy resources.<sup>2</sup>

Windmar’s recommendations can be summarized into the following: (i) the implementation or adoption of certain rates and tariffs to promote energy efficiency and demand response initiatives; (ii) the elimination of permitting requirements for certain generation or infrastructure resources; (iii) granting automatic qualifying facility status for specific generation resources; (iv) the installation of off-grid public lighting solutions; (v) the authorization of private generation, subject to certain criteria; and (vi) the approval of wind turbines for the Vieques Sound area. According to Windmar, all of the aforementioned recommendations serve as alternatives to specific directives and findings made by the Commission related to energy efficiency, demand response, energy storage, renewable energy contracts and generation, and transmission and distribution resources.

## III. Brief Background on PREPA’s IRP

In approving Act 57-2014,<sup>3</sup> the Puerto Rico Legislature recognized the need for a meaningful transformation of Puerto Rico’s electric market. To achieve such goal, the Legislature empowered the Commission with broad regulatory powers aimed at forcing structural changes within all levels of Puerto Rico’s energy sector. This with the purpose of reducing dependence on fossil fuel generation, reduce and stabilize energy prices and promote greater integration of clean, renewable energy resources.

A cornerstone of the strategy for transforming Puerto Rico’s energy infrastructure is implementing effective and reliable long-term planning standards. The absence of such planning standards has denied PREPA the necessary tools to adequately plan short-, medium- and long-term maintenance and capital investments, resulting in an underperforming energy infrastructure, inefficient generation standards and high energy costs. Furthermore, the lack of a Commission vetted and carefully crafted capital investment plan has led PREPA to invest significant amounts of resources in the development of infrastructure projects which never come to fruition. This has resulted in expenses which must be recovered from customers through rates, but provide no benefits or a measurable increase in quality of service.

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<sup>1</sup> See Windmar’s Motion for Reconsideration, at ¶8.

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

<sup>3</sup> The Puerto Rico Energy Transformation and RELIEF Act, as amended.

To address its chronic planning woes, Act 57-2014 required PREPA to develop and file for Commission review and approval an Integrated Resource Plan (“IRP”). Act 57-2014 defines an IRP as:

a plan that considers all reasonable resources to satisfy the demand for electric power services during a specific period of time, including those related to the offering of electric power, whether existing, traditional, or new resources, and those related to energy demand, such as energy conservation and efficiency, or demand response and localized energy generation by the customer.<sup>4</sup>

As we stated in our Final Resolution and Order on the IRP:

The IRP must “describe the combination of energy supply and conservation resources that satisfies in the short-, medium-, and long-term the present and future needs of the energy system both of Puerto Rico and of their customers *at the lowest cost possible.*” The plan must reflect a comprehensive evaluation of the electricity system. That evaluation must include a range of forecasts, and must address, but is not limited to, the following topics: conservation resources; conventional and nonconventional generation resources, both existing and future (including their operation efficiencies and remaining useful lives); transmission and distribution capacity; system reliability and stability; the need to diversify supply sources and stabilize energy costs; environmental impacts, including air, water and solid waste; and the procedures for and costs of interconnecting renewables and other independent power plants.<sup>5</sup>

We further stated that “[p]roperly designed and continuously executed, an integrated resource planning process will carry out the Legislature’s intent to evolve the energy sector into one that relies less on imported fossil fuels and more on Puerto Rico’s own resources.”<sup>6</sup> Through the IRP, the Commission would ensure that PREPA’s short-, medium- and long-term maintenance and capital investment programs represent the least-cost alternative towards reliable electric service, at reasonable rates, and which complies with existing energy public policy.

Furthermore, in our Final Resolution and Order, we stated that:

An IRP is a living document. It must reflect the best knowledge available at the time it is prepared, and the best possible decisions in light of that

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<sup>4</sup> Art. 1.3(hh) of Act 57-2014.

<sup>5</sup> See Commission Final Resolution and Order, at ¶20. Citations omitted.

<sup>6</sup> *Id.*, at ¶29.

information. It must account for risk and uncertainty. While an IRP addresses needs of the long-term, it also must guide actions in the short term. As new information emerges—such as information about new technologies and new customer needs—the plan must evolve. Consequently, our IRP Rule calls for a triennial process—one in which PREPA, the Commission and the public revisit the existing plan, incorporate the new information, and develop a new action plan. Periodic reconsideration, revision and reinvention are essential to a robust planning process.<sup>7</sup>

As such, the fact that specific resource alternatives were not included in the Modified IRP does not mean that such alternatives cannot be considered or incorporated in a future proceeding, subject that sufficient evidence to support such conclusions is available in the record. “Each decision [made by the Commission in its Final Resolution and Order] must be based on the best available information at the time the decision is made.”<sup>8</sup>

#### **IV. Discussion and Analysis**

Prior to issuing its Final Resolution and Order, the Commission granted intervenors an opportunity to file substantive briefs regarding PREPA’s proposed IRP in order to argue on behalf of other resources that each intervenor considered a better alternative to PREPA’s proposal.<sup>9</sup> Windmar did not file a substantive brief. Moreover, other than listing a set of recommendations or alternatives, and citing Act 57-2014’s general public policy goals, Windmar’s Motion for Reconsideration does not provide any substantive discussion in support of its request.

It’s important to note that none of Windmar’s recommendations were evaluated during the IRP proceeding. Windmar did not provide any evidence to support its assertion that such alternatives are viable or cost-effective, or that they are preferable to any of the options proposed by PREPA or considered by the Commission. Some of the recommendations in Windmar’s Motion for Reconsideration were mentioned by Windmar’s representatives during public hearings. However, aside from questioning PREPA on the reasons for not including such alternatives in their analysis, Windmar did not provide any additional information or evidence in support of its statements. Nor did Windmar elaborate on the benefits of including such alternatives as part of PREPA’s IRP.

While PREPA has the initial burden of proving that their proposed IRP represents the best alternative (e.g. the least-cost alternative), intervenors seeking to propose alternative resources and investments must provide sufficient evidence for the

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<sup>7</sup> *Id.*, at ¶28.

<sup>8</sup> *Id.*, at ¶29.

<sup>9</sup> On February 10, 2015, the Commission notified the IRP’s Procedural Calendar and indicated that all intervenors must file their substantive briefs on or before April 20, 2016. Afterwards, through an order of April 19, 2016 the Commission extended the filing date to April 29, 2016.

Commission to determine that such an alternative is preferable to those proposed by PREPA or by other intervenors. By not providing evidence in support of its recommendations, or by failing to point towards information already submitted by PREPA as evidence of the feasibility or adequacy of their recommendations, Windmar did not meet its burden of proof.

Section 3.18 of the Uniform Administrative Procedure Act (“LPAU”, by its Spanish acronym)<sup>10</sup> provides that an agency’s final decision in an administrative proceeding must be based exclusively on the evidence available in the case record. The Commission’s disapproval of PREPA’s proposed IRP, and the subsequent approval of a Modified IRP, is the result of applying such a rule. The Commission disapproved PREPA’s proposed IRP because PREPA failed to provide sufficient evidence to show that its preferred alternatives were the least-cost alternatives for modernizing and updating PREPA’s ageing infrastructure. However, recognizing the imperative need for an IRP to guide PREPA’s short- and medium-term maintenance and investment programs, the Commission approved a Modified IRP which identifies prudent maintenance and investment actions that, based on the evidence in record, represent the least-cost alternative to ratepayers. As such, both actions by the Commission—the disapproval of PREPA’s proposed IRP and the approval of a Modified IRP—were based on the evidence available in the case record. Had Windmar presented sufficient evidence in support of each of its recommendations, the Commission would have been in a position to determine whether to incorporate such recommendations into PREPA’s Modified IRP. This was not the case.

Windmar argues that its recommendations must be included in PREPA’s Modified IRP, since they are required to comply with the public policy goals set forth by Act 57-2014. Yet, the lack of evidence presented by Windmar prevents the Commission from determining whether they are, in fact, the least-cost alternatives for meeting the many public policy goals set forth by Act 57-2014.

As an example, one of Windmar’s recommendations is allowing for the construction of wind turbines within the Vieques Sound area, as an alternative for a number of other generation resources identified in the Modified IRP. However, absent from the record, and from Windmar’s Motion for Reconsideration, is any evidence or argument supporting the Vieques Sound area as the ideal place for the development of such project or whether such project would generate sufficient capacity to effectively replace or reduce the need for any of the other generation resources contemplated in the Modified IRP. In addition, absent from the record are, among others, an analysis of the cost of undertaking such project, the investments in transmission and distribution required to interconnect such project to PREPA’s grid, and whether such an alternative could be successfully integrated into PREPA’s grid, given available studies related to the limits on renewable integration.

Similarly, another of Windmar’s recommendations contemplates automatic permitting for certain types of pump storage facilities as an alternative to new generation

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<sup>10</sup> 3 L.P.R.A. §2168.

capacity. While such an alternative suffers from the same shortcomings as the example discussed above, it also assumes that the Commission has statutory authority to exempt specific projects from permitting regulations. Nowhere in Act 57-2014 is the Commission authorized to grant a specific project an exemption from complying with applicable permitting rules and regulations, or with any other applicable law.

Windmar's recommendations are centered in a principled defense of the need to ensure and promote clean, renewable energy as a solution to the overdependence on fossil fuel. The Commission shares this concern. However, the Commission must base its determinations on the information available at the moment it must make a decision. The Commission's role is to guide PREPA and stakeholders towards a path that achieves a sustainable, modern and efficient electric service. Stakeholders must take the lead in this effort by elaborating comprehensive proposals that challenge the many paradigms of our current energy sector. Such task must begin by recognizing that the Commission's decisions must be based on evidence.

## V. Conclusion

A motion for reconsideration must allege specific facts which show that the findings and conclusions made by the administrative agency are not supported by the evidence in record.<sup>11</sup> Consistent with this standard, Section 11.01 of Regulation 8543<sup>12</sup> provides that a motion for reconsideration "shall state in detail the grounds supporting the petition and the remedy that, according to the petitioner, the Commission should have granted."

As previously discussed, Windmar's Motion for Reconsideration fails to allege with sufficient specificity factual or legal arguments that supports its request for the Commission to adopt its recommendations, nor does it provide any technical or legal discussion with regards to the evidence in record and how it's recommendations are supported by such evidence. Furthermore, Windmar's Motion for Reconsideration does not challenge any of the findings or conclusions made by the Commission in its Final Resolution and Order, or any of the directives included therein.

In light of the aforementioned, and given that Windmar did not provide, either during the proceeding nor as part of its request, arguments or evidence in support of the inclusion of any of its recommendations in the Modified IRP, the Commission hereby **DENIES** its Motion for Reconsideration.

Any party adversely affected by this Resolution may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date a copy of the notice of this Resolution was filed in the record of the Commission. Copy of such filing must be

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<sup>11</sup> See *JP v. Cordero Badillo, Inc.*, 177 D.P.R. 177, 186-87 (2009).


<sup>12</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures.




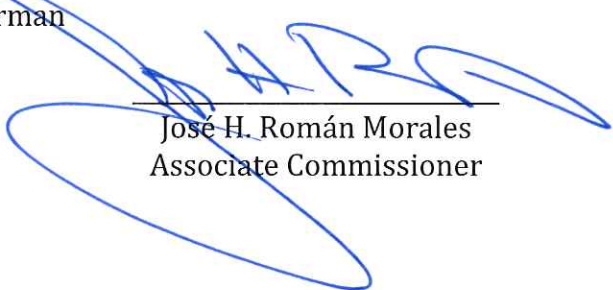
provided to the Commission and to all parties in this proceeding within the aforementioned thirty (30) day term. The filing and notice of such petition shall be made in accordance with Section 4.2 of the LPAU<sup>13</sup> and the rules and regulations of the Court of Appeals.

For the benefit of all the parties involved, the Commission issues this Resolution in both Spanish and English languages. Should any conflict between each version arise, the English version shall prevail.

Be it notified and published.

  
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Agustín F. Carbó Lugo  
Chairman

  
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Ángel R. Rivera de la Cruz  
Associate Commissioner

  
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#### CERTIFICATION

I hereby certify that the Puerto Rico Energy Commission has so agreed on February 10, 2017. I also certify that on this date a copy of this Resolution was notified by electronic mail to the following: acasellas@amgprlaw.com, agraitfe@agraitlawpr.com, ana.rodriguez@oneillborges.com, jperez@oipc.pr.gov, carlos.reyes@ecoelectrica.com, carlos.valldejuly@oneillborges.com, ccf@tcmrslaw.com, cfl@mcvpr.com, codiot@oipc.pr.gov, dortiz@elpuente.us, edwin.quinones@aae.pr.gov, info@aae.pr.gov, dperez@cabprlaw.com, epo@amgprlaw.com, energiaverdepr@gmail.com, fermin.fontanes@oneillborges.com, ivc@mcvpr.com, felipelozada1949@gmail.com, hburgos@cabprlaw.com, fviejo@amgprlaw.com, lga@elpuente.us, lionel.orama@upr.edu, mgrpcorp@gmail.com, lmateo@ferraiuoli.com, n-ayala@aeep.com, n-vazquez@aeep.com, rstgo2@gmail.com, valvarados@gmail.com, pnieves@fgrlaw.com, victorluisgonzalez@yahoo.com and mehernandez@fgrlaw.com. I also certify that today, February 10, 2017, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Commission and I have sent a true and exact copy to the following:

<sup>13</sup> 3 L.P.R.A. § 2172.



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For the record, I sign this in San Juan, Puerto Rico, today, February 10, 2017.

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María del Mar Cintrón Alvarado  
Clerk