

COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY COMMISSION

IN RE: AGUIRRE SITE ECONOMIC ANALYSIS

CASE NO.: CEPR-AP-2017-0001

SUBJECT: Ruling on Requests for Intervention.

RESOLUTION AND ORDER

On March 3, 2017, the Puerto Rico Energy Commission (“Commission”) issued a Resolution and Order addressing the requests for intervention filed in relation to the instant proceeding. Through said Resolution and Order, the Commission granted the request for intervention of ten (10) separate entities. The Commission also granted the request for participation as *amicus curiae* filed by the Commonwealth Energy Public Policy Office. Additionally, the Commission ordered EcoEléctrica, L.P. (“EcoEléctrica”) and a ENGIE Development, LLC (“ENGIE”) to show cause as to why the Commission should not order their joint appearance in the instant case, given that both entities shared the same legal representation.

On March 8, 2017, EcoEléctrica filed a *Motion in Compliance as to Petition for Intervention filed by ENGIE Development, LLC*, while ENGIE filed a new *Petition for Intervention*. EcoEléctrica argued against a joint appearance with ENGIE, contending, among other things, that “EcoEléctrica’s commercial interests may not be the same as those of ENGIE’s”¹ and that “[g]iven that EcoEléctrica and ENGIE’s expertise, lines of business, and areas of interest may at times differ, a joint participation is impractical for both companies as it would needlessly force them to have a complete agreement prior to presenting, filing or submitting any comments.”²

On the other hand, ENGIE argued that its parent company is a “supplier of LNG to the EcoEléctrica Terminal and has an equity ownership interest in the EcoEléctrica Terminal.”³ ENGIE also argued that it is a “developer of power generation, gas and LNG projects worldwide and has experience with developing, owning and operating offshore LNG facilities.”⁴ ENGIE further stated that it is a “separate and distinct entity from EcoEléctrica with separate management and separate interests in Puerto Rico and the Puerto Rican

¹ EcoEléctrica’s Motion, ¶6(d).

² *Id.* at ¶6(f).

³ ENGIE’s Petition for Intervention, ¶4.

⁴ *Id.*

energy market. As such, separate interventions are necessary and should be granted for each company.”⁵

With regards to the nature of its intervention, ENGIE stated that it “will review the documentation [...] provided [...] and will participate in the proceedings”⁶ and that it seeks the opportunity to “file pleadings and conduct discovery [...] and file comments on the proposed IRP.”⁷

The Commission does not dispute the fact that EcoEléctrica and ENGIE are separate and independent commercial entities with separate management and administrative structures. The Commission’s concern is motivated by the fact that both entities are simultaneously represented by the same attorney. The reason for this concern is twofold. First, the complexity of the subject matter requires the Commission to implement logistical rules which will ensure an organized and expedient process, whereby a thorough evaluation of the evidence and information brought forth will be accomplished with the diligence required to achieve a meaningful transformation of Puerto Rico’s energy sector. As such, the Commission is seeking to avoid any duplicity which would adversely impact the ability to complete the instant case in a timely manner.

Secondly, given that both EcoEléctrica and ENGIE have stated that their interests are separate and may, at times, differ, the Commission is concerned that, should such differences arise, unavoidable conflict of interest may ensue, given that their current attorney of record may be required to simultaneously defend diverging interests. Should it occur, such a situation may negatively impact the effectiveness of each party’s intervention in the current proceeding and unduly delay the proceedings until such a conflict is resolved.

The Commission finds that EcoEléctrica and ENGIE’s interests are sufficiently distinct and that each party may provide valuable information to the Commission, based on their respective areas of expertise. However, in light of their distinctive interests, the Commission will adopt the necessary measures to guarantee the timely and orderly conclusion of the instant proceeding and ensure that the interests of both parties are adequately protected.

Accordingly, the Commission **ACCEPTS** EcoEléctrica and ENGIE’s separate intervention. The Commission **ORDERS** EcoEléctrica and ENGIE to retain separate legal

⁵ *Id.*

⁶ *Id.* at ¶6.

⁷ *Id.* at ¶7. The Commission notes that ENGIE refers to having the opportunity to “file comments on the proposed IRP.” The Commission clarifies that the purpose of the instant proceeding is to specifically review the economic feasibility of the proposed Aguirre Offshore Gas Port (“AOGP”), as to determine whether such a project is finally included within the Modified IRP approved by the Commission through its September 26, 2016 Final Resolution and Order (See Case No. CEPR-AP-2015-0002). Accordingly, the Commission will not consider or accept pleadings, testimony, comments or any other type of evidence related to the approved Modified IRP, except as such pleadings, testimony, comments or evidence are directly related to the evaluation of the AOGP project.

representation and notify such representation to the Commission **no later than** **Wednesday, March 22, 2017.**

Any party adversely affected by this Resolution and Order may file a motion for reconsideration before the Commission, pursuant to Section 11.01 of Regulation 8543 and the applicable provisions of the LPAU. Said motion must be filed within twenty (20) days from the date in which copy of this Resolution and Order is notified and such notice is filed in the case docket by the Commission's Clerk. Any motion for reconsideration must be filed at the Commission Clerk's Office, located at the Lobby of 268 Muñoz Rivera Ave., San Juan, PR 00918. Copy of the motion as filed must be sent by email to all the parties notified of this Resolution and Order within the twenty (20) days established herein.

The Commission shall have fifteen (15) days from the date in which such motion is filed to consider it. If the Commission rejects it forthright or fails to consider it within said period of fifteen (15) days, the term to seek judicial review shall begin on the date in which the Commission notifies its rejection or the date in which said fifteen (15) days expire, whichever occurs first. If the Commission considers the motion, the term to seek judicial review shall commence from the date a copy of the notice of the Commission's resolution definitively resolving the motion for reconsideration is notified and copy of such notice is filed by the Commission Clerk. The Commission shall have ninety (90) days from the date the motion for reconsideration was filed to issue a final determination. If the Commission considers the motion for reconsideration but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction and the term to seek judicial review shall commence upon the expiration of said ninety (90) day term, unless the Commission, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

In the alternative, any affected party 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 and Order was notified and copy of such notice was filed by the Commission's Clerk. Filing and notice of a petition for review before the Court of Appeals shall be made pursuant to the applicable provisions of Regulation 8543, the LPAU and the Rules of the Puerto Rico Court of Appeals.

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

Be it notified and published.



Agustín F. Carbó Lugo
Chairman

Ángel R. Rivera de la Cruz
Associate Commissioner

CERTIFICATION

I hereby certify that the the Puerto Rico Energy Commission has so agreed on March 15, 2017. The Associate Commissioner José H. Román did not intervene. I also certify that a copy of this Resolution regarding Case No. CEPR-AP-2017-0001 was notified by electronic mail to the following: : n-ayala@aepr.com, n-vazquez@aepr.com, c-aquino@aepr.com, jperez@oipc.pr.gov, codiot@oipc.pr.gov, francisco.rullan@aepr.gov; epo@amgprlaw.com, acasellas@amgprlaw.com, ladrian@gasnaturalfenosa.com, rstgo2@gmail.com, cfl@mcvpr.com, carlos.reyes@ecoelectrica.com, ccf@tcmrslaw.com, agraitfe@agraitlawpr.com, hmc@mcvpr.com, molinilawoffices@gmail.com, sierra@arctas.com, tonytorres2366@gmail.com, richard.houston@na.engie.com, mgrpcorp@gmail.com, serdar.tufekci@na.engie.com, victorluisgonzalez@yahoo.com, lfortuno@steptoe.com, equinones@qaclaw.com, vcandelario@qaclaw.com and gmartinez@qaclaw.com. I further certify that on March 15, 2017, I have proceeded with the filing of this Resolution and I have sent a copy thereof to:

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For the record, I sign this in San Juan, Puerto Rico, today, March 15, 2017.

María del Mar Cintrón Alvarado
Clerk