



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

IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN

CASE NO.: CEPR-AP-2018-0001

SUBJECT: EDF and Local Environmental
Organizations Joint Motion Concerning
PREPA's Secret Request for Proposals.

RESOLUTION

On October 16, 2019, the Environmental Defense Fund ("EDF") and the Local Environmental Organizations ("LEO") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Joint Motion from EDF and Local Environmental Organizations Concerning PREPA's Secret Requests for Proposals* ("Joint Motion"). Through their Joint Motion, EDF and LEO argue that the Puerto Rico Electric Power Authority ("PREPA") has violated Act 83 of May 2, 1941¹ and Regulation 8815² by secretly issuing, since the beginning of the instant case, Request for Proposals ("RFP") without obtaining prior approval from the Energy Bureau. Additionally, EDF and LEO argue that the issuance of these RFPs violates the legislative intent behind Act 120-2018.³

Specifically, EDF and LEO state that the RPFs issued by PREPA (i) to convert San Juan units 5 & 6 to gas-fired units, and (ii) for Mobile Generating Units to be installed at Yabucoa and Palo Seco, usurp the Energy Bureau's "right to decide the relative importance of these technologies through the Integrated Resource Plan process."⁴ Therefore, EDF and LEO request the Energy Bureau to:

- a. Issue a Public Notice that any RFP issued by PREPA, specifically including the Request for Proposals for Mobile Generating Units to be installed at Yabucoa and Palo Seco without following each and every requirement of Regulation 8815 and Act 83, is null and void.

¹ *Puerto Rico Electric Power Authority Act*, as amended ("Act 83").

² *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*.

³ *Puerto Rico Electric Power System Transformation Act*.

⁴ Joint Motion, p. 2.

- b. Issue a Public Notice that any contract awarded as a result of such RFPs is null and void.
- c. Order PREPA to cancel any current RFP processes that did not follow the requirements of Regulation 8815 and Act 83.
- d. Order any other relief that the Energy Bureau deems just and reasonable.⁵

On October 22, 2019, PREPA filed before the Energy Bureau a document titled *Notice of Intent to Move to Strike or in the Alternative File Opposition to Joint Motion from EDF and Local Environmental Organizations Concerning PREPA's Secret Request for Proposals* ("Motion"). Through its Motion, PREPA informed the Energy Bureau of its intent to move to strike and or file an opposition to the Joint Motion. As of the date of this Resolution, PREPA has not filed additional documents regarding this matter.

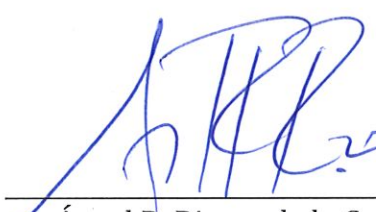
The issues raised in the Joint Motion are not part of the evaluation process of the proposed Integrated Resource Plan ("IRP"). The RFPs identified in the Joint Motion have been evaluated by, or are under evaluation of, the Energy Bureau. Specifically, the Energy Bureau issued its final determination regarding the RFP for the conversion of San Juan Units 5 & 6 to natural gas, under Case No. CEPR-AI-2018-0001.⁶ Furthermore, the Energy Bureau initiated an investigation regarding PREPA's RFPs for Mobile Generation Units, under Case No. NEPR-IN-2019-0001.⁷ Such investigation is still open and under the Energy Bureau's consideration.

Based on the above, the EDF and LEO's Joint Motion **is stricken from the record**.

Be it notified and published.



Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner

⁵ *Id.*, p. 7.

⁶ Resolution and Order on PREPA's Non-Compliance with Orders and Regulations, Case No. CEPR-AI-2018-0001, January 25, 2019.

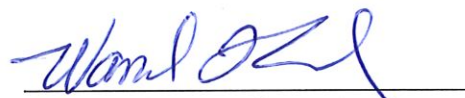
⁷ Resolution and Order, Notice of Investigation, Case No. NEPR-IN-2019-0001, July 26, 2019.



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on November 5, 2019. Associate Commissioner Ángel R. Rivera de la Cruz issued a concurring opinion. I also certify that on November 5, 2019 a copy of this Resolution was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aeep.com, c-aquino@prepa.com, mvazquez@diazvaz.law, kbolanos@diazvaz.law, acarbo@edf.org, javier.ruajovet@sunrun.com, pedrosaade5@gmail.com, rmurthy@earthjustice.org, carlos.reyes@ecoelectrica.com, ccf@tcmrslaw.com, victorluisgonzalez@yahoo.com, mgrpcorp@gmail.com, hrivera@oipc.pr.gov, jrivera@cnslpr.com, manuelgabrielfernandez@gmail.com, acasellas@amgprlaw.com, corey.brady@weil.com, maortiz@lvprlaw.com, rnegron@dnlawpr.com, paul.demoudt@shell.com, escott@ferraiuoli.com, sproctor@huntonak.com, agraitfe@agraitlawpr.com, cfl@mcvpr.com, sierra@arctas.com, tonytorres2366@gmail.com, info@liga.coop, amaneser2020@gmail.com, mpietrantoni@mpmlawpr.com, apagan@mpmlawpr.com.

I sign this in San Juan, Puerto Rico, today November 5, 2019.


Wanda I. Cordero Morales
Clerk



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Associate Commissioner Ángel R. Rivera de la Cruz, concurring

Today, the Puerto Rico Energy Bureau ("Energy Bureau") determined to strike from the record the document titled *Joint Motion from EDF and Local Environmental Organizations Concerning PREPA's Secret Requests for Proposals* ("Joint Motion"), filed by the Environmental Defense Fund ("EDF") and the Local Environmental Organizations ("LEO") on October 16, 2019. I concur with today's determination; however, I issue this opinion to clarify my vote.

* * *

The majority of the Energy Bureau determined that the issues raised in the Joint Motion are not part of the evaluation process of the proposed Integrated Resource Plan ("IRP").¹ I concur with such determination. As expressed in today's Resolution, the Requests for Proposals ("RFPs") identified in the Joint Motion have been evaluated by, or are under evaluation of, the Energy Bureau.

Regarding the conversion of San Juan Units 5 and 6 to burn Natural Gas, on January 25, 2019, the majority of the Energy Bureau issued a Resolution and Order in Case No. CEPR-AI-2018-0001 ("January 25 Resolution and Order") through which it determined that the "conversion of San Juan Units 5 and 6 does not constitute a significant modification to the Approved IRP which entails its amendment."² Moreover, the majority of the Energy Bureau also determined that it is clear "that the conditions of the electric infrastructure in the aftermath of Hurricanes [Irma and María] require the Energy Bureau not to remain inert in front of certain beneficial initiatives while simultaneously seeking its sustainable development in the long term."³

¹ Resolution, Case No. CEPR-AP-2018-0001, November 5, 2019, p. 2.

² Resolution and Order, Case No. CEPR-AI-2018-0001, January 25, 2019, p. 6.

³ *Id.*, p. 9.

Based on these and other considerations, the majority of the Energy Bureau concluded that “considering the particular circumstances surrounding the RFP for the conversion of Units 5 and 6 as well as PREPA’s compliance with Regulation 8815, the Energy Bureau deems that the approval of the Proposed Contract is warranted.”⁴ As such, the Energy Bureau approved the proposed contract for the conversion of San Juan Units 5 and 6.⁵

It is important to note that I disagreed with the majority of the Energy Bureau.⁶ I believe that the conversion of San Juan Units 5 and 6 constituted a modification of the Approved IRP, and as such, the awarded contract was inconsistent with such Approved IRP. However, as an Associate Commissioner of the Puerto Rico Energy Bureau it is my duty to apply all laws and regulations, including the standing Energy Bureau’s resolutions and orders, to the controversies under our consideration.

Through the January 25 Resolution and Order, the majority of the Energy Bureau determined that, at least in the final stages of the approval process, the Puerto Rico Electric Power Authority (“PREPA”) complied with Regulation 8815⁷ regarding the conversion of San Juan Units 5 and 6.⁸ Moreover, the majority of the Energy Bureau approved the referenced conversion.

Therefore, even though I disagreed with such decision, the January 25 Resolution and Order constitutes a final Energy Bureau determination that must be applied to any future proceedings or controversies that are under its consideration. As such, the remedy LEO and EDF pursue regarding the conversion of the San Juan Units 5 and 6 is unwarranted.

Finally, as the Energy Bureau expressed in today’s Resolution, it initiated an investigation regarding PREPA’s RFPs for Mobile Generation Units, under Case No. NEPR-IN-2019-0001.⁹ All issues pertaining such RFPs will be investigated and resolved through the Final Resolution the Energy Bureau will issue in Case No. NEPR-IN-2019-0001. Therefore, the instant case is not the right forum to evaluate LEO and EDF’s request regarding PREPA’s RFPs for Mobile Generation Units at Palo Seco and Yabucoa.

⁴ *Id.*, p. 10.

⁵ *Id.*

⁶ See in general, Resolution and Order, Case No. CEPR-AI-2018-0001, January 29, 2019, Commissioner Ángel R. Rivera de la Cruz, dissenting.

⁷ *Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet.*

⁸ Resolution and Order, Case No. CEPR-AI-2018-0001, January 25, 2019, p. 10.

⁹ Resolution and Order, Notice of Investigation, Case No. NEPR-IN-2019-0001, July 26, 2019.



For all these reasons, I agree that the Joint Motion should be stricken for the record.
Therefore, I concur with the Resolution issued today by the Energy Bureau.

A handwritten signature in blue ink, appearing to read 'AR Rivera', written over a horizontal line.

Ángel R. Rivera de la Cruz
Associate Commissioner

In San Juan, Puerto Rico, on November 5, 2019