

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



IN RE: REQUEST FOR APPROVAL OF
AMENDED AND RESTATED POWER
PURCHASE AND OPERATING AGREEMENT
WITH ECOELECTRICA AND NATURAL GAS
SALE AND PURCHASE AGREEMENT WITH
NATURGY

CASE NO.: NEPR-AP-2019-0001

SUBJECT: Resolution and Order on the
Puerto Rico Electric Power Authority's
Request for Approval of Amended and
Restated Power Purchase Agreement with
EcoEléctrica and Natural Gas Sale and
Purchase Agreement with Naturgy; Request
for Confidential Treatment.

RESOLUTION AND ORDER

I. Introduction

On November 5, 2019, the Puerto Rico Electric Power Authority ("PREPA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Request for Approval of Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy; Request for Confidential Treatment of this Letter and Accompanying Attachments* ("Petition").¹ In its Petition, PREPA asked the Energy Bureau to, pursuant to Section 7.1 of Regulation 8815,² review and approve an Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. ("EcoEléctrica") and PREPA, and an Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos, S.A. ("Naturgy") and PREPA, (together the "Agreements").³ PREPA also asked the Energy Bureau to treat the Petition and its attachments as confidential documents.⁴

For the reasons stated herein, the Energy Bureau **DETERMINES, without prejudice,** that **at this time**, the proposed Agreements are contrary to the public interest. The Energy

¹ The filing contains unredacted documents.

² *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*, October 11, 2016.

³ Petition, p. 1.

⁴ *Id.*, pp. 19 – 20.

Bureau **GRANTS PREPA leave to refile its Petition** after the Energy Bureau issues a Final Resolution regarding the proposed Integrated Resource Plan ("IRP") that is pending approval.⁵ The Energy Bureau is currently evaluating a proposed IRP filed by PREPA on June 7, 2019, as part of the docket of the case *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.

With respect to PREPA's arguments regarding the confidentiality of the Petition, as filed (*i.e.*, unredacted version), the Energy Bureau **GRANTS** PREPA's request for confidential designation and treatment of the Petition and its attachments. The Energy Bureau **ORDERS** PREPA to submit, within fifteen (15) days of the notification date of this Resolution and Order, redacted versions of the Petition and its attachments.

II. Applicable statutory and regulatory framework

PREPA asked the Energy Bureau to evaluate the Petition and approve it within thirty (30) days, pursuant to Section 7.1 of Regulation 8815.⁶ According to Section 1.1 of Regulation 8815, such regulation was "promulgated by virtue of the power vested in the Puerto Rico Energy [Bureau] and the Puerto Rico Electric Power Authority by Sections 6B(a)(ii), 6B(a)(iii) of Act No. 83 of May 2, 1941, as amended, and Article 6.3 of Act No. 57-2014." PREPA approved Regulation 8815 on August 12, 2016; the Energy Bureau approved it on September 1, 2016. Regulation 8815 became effective on October 11, 2016.

Section 6.3 of Act 57-2014⁷ describes the powers and duties of the Energy Bureau. According to paragraph (c) of the referenced Section 6.3, the Energy Bureau has the power to:

Establish and implement regulations and the necessary regulatory actions to guarantee the capacity, reliability, safety, efficiency, and reasonability of electricity rates of Puerto Rico and establish the guidelines, standards, practices, and processes to be followed by the Authority when purchasing electricity from other power service companies and/or modernize its power plants or facilities; provided, that every power purchase agreement shall meet the standards, terms, and conditions established by the [Energy

⁵ Paragraph (d) of Section 6.32 of Act 57-2014, as amended, known as *The Puerto Rico Energy Transformation and RELIEF Act*, establishes in part that "[t]he Energy Bureau shall not approve an agreement that is inconsistent with the Integrated Resource Plan, particularly in all that pertains to renewable energy, distributed generation, conservation and efficiency goals established in the integrated resource plan as well as in the Energy Public Policy." Emphasis supplied. In order to be consistent with an approved IRP, any proposed agreement must be consistent with, or be one of, the approved actions contained in the Action Plan of the new IRP.

⁶ Petition, pp. 20 – 21.

⁷ Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.



Bureau] in accordance with the provisions of the Puerto Rico Energy Policy Act and [Act 57-2014].

At the moment the Energy Bureau and PREPA approved Regulation 8815, Sections 6B(a)(ii) and 6B(a)(iii) of Act 83⁸ established:

(ii) *Production costs.*— If it is necessary for the Authority to purchase electricity for Puerto Rico, any power purchase agreement shall meet the criteria established by the Commission pursuant to this Act, provided that, no energy co-generator shall realize gains attributable to fuel. ... Before its execution, any power purchase agreement shall be submitted for the Commission's evaluation and approval, to ensure that the prices, adjustments, escalation, and profit margin meet the criteria established by the Commission.

(iii) *Bid process and request for proposals for the purchase of power and/or modernization of electric power generation facilities.*— Any bid process or request for proposals for the purchase of electric power by the Authority shall be carried out by the Authority subject to the supervision of the Commission **and in accordance with a joint regulations to be approved by the Commission and the Authority for such purposes**, within a term that shall not exceed ninety (90) days after the approval of the Electric Power Authority Revitalization Act. Likewise, any bid process or request for proposals for the modernization of electric power generation plants or facilities to be carried out by the Authority in order to improve their efficiency, shall be carried out by the Authority in a competitive manner by means of requests for proposals subject to supervision and in accordance with a joint regulations to be approved for such purposes, or by means of the Public-Private Partnership process provided in Section 6C of this Act pursuant to the parameters of Act 29-2009, **as well as the provisions of the aforementioned joint regulations.** Notwithstanding the foregoing, if the Authority fails to comply with the deadlines to complete the competitive processes set forth in the Energy RELIEF Plan and of the Integrated Resource Plan, the Commission shall be authorized to begin and carry out said bid, request for proposals, or public-private partnership processes for the purchase of electricity or the modernization of plants by the Authority, through its own regulations to that effect, which processes shall be defrayed by the Authority itself. (Emphasis supplied)

Sections 6B(a)(ii) and 6B(a)(iii) of Act 83 mandated that all Power Purchase Agreements that PREPA intended to subscribe, had to meet the criteria established by the Energy Bureau (then the Puerto Rico Energy Commission) and be procured in accordance with a joint regulation to be approved by the Energy Bureau and PREPA. Regulation 8815 is the result of such mandate.

⁸ Act No. 83 of May 2, 1941, as amended, known as *The Puerto Rico Electric Power Authority Act*.



Notwithstanding the above, Section 2.9 of Act 17-2019⁹ amended Act 83 to revoke Section 6B of Act 83 and substitute it with a new Section 6B. The new Section 6B describes PREPA's responsibilities regarding the filing of the IRP with the Energy Bureau. All the language contained in Sections 6B(a)(ii) and 6B(a)(iii) of Act 83 was removed by this amendment. Therefore, Act 17-2019 eliminated in part the legal basis under which Regulation 8815 was promulgated. Moreover, paragraph (b) of Section 1.11 of Act 17-2019 establishes that "[a]ny power purchase agreement, or any amendment to or extension of a power purchase agreement awarded prior to the approval of Act No. 57-2014, between the Authority, or the transmission and distribution network Contractor and any independent power producer **shall be executed pursuant to the provisions of Section 6.32 of Act No. 57-2014 and the regulations adopted thereunder by the Bureau.**"¹⁰

Act 17-2019 also amended Section 6.32 of Act 57-2014 to implement the mandate established in Section 1.11 of Act 17-2019. Paragraphs (b) and (d) of Section 6.32 of Act 57-2014, as amended by Act 17-2019, establish:

(b) The provisions of this Section shall not apply to power purchase agreements that have been entered into by the Authority prior to the approval of this Act. However, **any extension of or amendment to a power purchase agreement executed prior to the approval of Act No. 57-2014 shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.**

...

(d) In evaluating every proposal for an agreement between electric power service companies, **the Energy Bureau shall take into account the provisions of the integrated resource plan. The Energy Bureau shall not approve an agreement that is inconsistent with the Integrated Resource Plan**, particularly in all that pertains to renewable energy, distributed generation, conservation and efficiency goals established in the integrated resource plan as well as in the Energy Public Policy. (Emphasis supplied).

Moreover, paragraph (a) of Section 6.32 of Act 57-2014 establishes:

(a) The Energy Bureau shall evaluate and approve all agreements between electric power service companies, including independent power producers, prior to the execution thereof. **This includes, but shall not be limited to, the evaluation and approval of power purchase agreements whereby an independent power producer shall provide energy to the electric**

⁹ Known as *The Puerto Rico Energy Public Policy Act*.

¹⁰ Emphasis supplied.



power service company responsible for operating the Electrical System. However, when a power purchase agreement is part of a PREPA Transaction, the Energy Compliance Certificate shall suffice in accordance with the provisions of Act No. 120-2018, as amended. (Emphasis supplied).

Finally, paragraph (e) of Section 6.32 of Act 57-2014 establishes:

(e) The [Energy Bureau] shall have thirty (30) days after the date on which a project agreement is submitted for its review under this Section, to review it and determine (A) if it approves it, (B) if it declares it contrary to the public interest, or (C) if the project agreement should be evaluated in depth. Provided, that if the [Energy Bureau] fails to issue a resolution with one of these three possible determinations within thirty (30) days, it shall be understood that the project agreement has been approved. If the [Energy Bureau] decides that the project agreement should be evaluated in depth, it shall issue a final resolution and determine whether it approves or declares the project contrary to the public interest within a term that shall not exceed ninety (90) days. If the [Energy Bureau] fails to issue its final resolution within said ninety (90)-day term, it shall be understood that the project agreement has been approved. The resolutions issued by the [Energy Bureau] regarding the approval or declaration against the public interest of these agreements shall be posted on the [Energy Bureau's] website.

Analyzing the provisions of Section 1.11 of Act 17-2019 and Section 6.32 of Act 57-2014, as well as the fact that Act 17-2019 eliminated Sections 6B(a)(ii) and 6B(a)(iii) of Act 83, it is concluded that, all amendments to, or extensions of, a power purchase agreement awarded prior to the approval of Act 57-2014 between PREPA and any independent power producer, were to be executed pursuant to the provisions of Section 6.32 of Act 57-2014. Paragraphs (a) and (b) of the referenced Section 6.32 clearly establish that the Energy Bureau must ensure that such extensions or amendments comply with the Puerto Rico Energy Public Policy Act **and the IRP**, before approving its execution. Moreover, paragraph (e) of Section 6.32 establishes the terms the Energy Bureau has to complete its evaluation of any proposed contract or project.

The provisions of Act 17-2019 and Section 6.32 of Act 57-2014, as amended by Act 17-2019, regarding the review and approval of amendments and extensions of power purchase agreements awarded prior to the approval of Act 57-2014, are incompatible with certain provisions of Regulation 8815, including its Section 7.1.

Paragraph (d) of Section 7.1 of Regulation 8815 establishes:

The [Energy Bureau] shall have the authority to review the terms of the Contract to ensure compliance with the previously approved terms of the RFP and the form of Contract that was included in such RFP. The [Energy Bureau] will also confirm that changes in the scope of the Project, if any, do



not render it inconsistent with the IRP. In Order to help in the analysis to be conducted by the [Energy Bureau] of the terms of the Contract, the Project Committee will prepare an analysis of its estimate of the potential range of Project profit margins and price escalators on the Proponent's project and compare it to industry benchmarks. The report submitted by the Project Committee shall include a detailed financial analysis which shall demonstrate the profitability ranges based on actual contractual terms and capital cost, operating cost, fuel, and other industry benchmarks. The [Energy Bureau] may ask for additional supporting information to make its evaluation, which requested information shall be submitted to the Authority within ten (10) days from receipt of the request for approval of the Contract. The [Energy Bureau] shall complete its evaluation process of such Contract in a period of not more than thirty (30) days, from the date in which the report and proposed Contract formally submitted, or, if additional information is requested, from the date in which such information is provided. Should the [Energy Bureau] fail to issue a written response prior to said thirty (30) days, the proposed Contract shall be deemed to have been approved by the [Energy Bureau]. If after its evaluation, the [Energy Bureau] rejects the changes made to the model Contract during the negotiation with the selected Proponent, or if it determines that the changes, if any, in the scope of the Project have rendered it inconsistent with the IRP, the [Energy Bureau] will state the grounds for the rejection of the Contract and will provide opportunity to the Project Committee for further negotiation of the terms of said Contract in order for it to address the issues noted by the [Energy Bureau]. Should the [Energy Bureau] require the selected Proponent to submit actual costs and profitability information, it shall directly require such information from such Proponent on a confidential basis in accordance with the Acts and confidentiality processes and procedures established by the [Energy Bureau]. Once PREPA has reached a new agreement, the process of approval of such Contract will begin as provided in this Section 7.1.

The terms for the Energy Bureau review of the proposed contracts, as established in the referenced Section 7.1, are not compatible with the terms established in paragraph (e) of Section 6.32 of Act 57-2014. Moreover, the standard of review and the process following the Energy Bureau's decision, as described in the referenced Section 7.1, are also incompatible with the provisions of Section 6.32 of Act 57-2014, as amended by Act 17-2019. Specifically, paragraph (b) of Section 6.32 establishes that any proposed amendment or extension of power purchase agreements awarded prior to the approval of Act 57-2014 must comply with the Puerto Rico Energy Public Policy Act, which requires a broader evaluation than the discrete evaluation process described in Section 7.1 of Regulation 8815.



The Puerto Rico Supreme Court has established that an Agency's interpretation of its Regulations cannot be incompatible with the public policy established by law.¹¹ Therefore, the Energy Bureau **DETERMINES** that it must evaluate PREPA's Petition pursuant to the provisions of Section 6.32 of Act 57-2014, as mandated by Section 1.11 of Act 17-2019.

III. Analysis and determination

a. Consistency with the IRP

Through the Final Resolution and Order of September 23, 2016 ("September 23 Resolution and Order"), the Energy Bureau approved PREPA's first IRP ("Approved IRP").¹² Such IRP became enforceable on March 13, 2017 and is considered the approved IRP.¹³ Notwithstanding the Approved IRP, due to the effects Hurricanes Irma and Maria had on the electric power system, on March 14, 2018 the Energy Bureau determined that a revision of PREPA's IRP was warranted.¹⁴ Therefore, the Energy Bureau initiated a proceeding to review PREPA's IRP.¹⁵

The Agreements' terms were not part of the analysis of the Approved IRP. As such, the EcoEléctrica Plant was modeled under the terms of the existing contract. Moreover, since the EcoEléctrica contract's expiration date fell outside the five-year term covered by the Action Plan of the Approved IRP, no actions were directed regarding EcoEléctrica's contract in the Approved IRP.¹⁶

As part of the current IRP review process, on June 7, 2019, PREPA filed before the Energy Bureau a new proposed IRP ("Proposed IRP").¹⁷ Although PREPA included potential revisions to capacity payments to EcoEléctrica as part of some scenario assumptions, other portions of the specific terms of the Agreements, including gas pricing and take-or-pay arrangements, have not been part of the analysis of the Proposed IRP, for which evidentiary

¹¹ *Ifco Recycling, Inc. v. ADS*, 184 DPR 712, 758 (2012). "La interpretación que realice la Autoridad de su Reglamento no puede ser incompatible con la política pública plasmada en la ley."

¹² Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, *In Re: Integrated Resource Plan for the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002.

¹³ Resolution and Order on Commencement of Review Proceeding and Order Establishing Initial Submission Timeline, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, March 14, 2018, p. 2.

¹⁴ *Id.*, p. 3.

¹⁵ *Id.*, pp. 3 - 4.

¹⁶ September 23 Resolution and Order, pp. 83 - 89.

¹⁷ PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, Case No. CEPR-AP-2018-0001, June 7, 2019.



hearings have been scheduled to commence on January 13, 2020. As such, the Energy Bureau has not issued a final order or resolution regarding the Proposed IRP. Therefore, the Energy Bureau cannot determine at this time that the Agreements are consistent with the Approved IRP or the Proposed IRP, as required by paragraph (d) of Section 6.32 of Act 57-2014.

b. Additional Information and Analysis

The Agreements contain certain changes to the capacity payments and the fuel prices PREPA will have to pay as part of the renegotiated terms. In its Petition, PREPA argues that the terms it has secured through the Agreements make the continued operation of the EcoEléctrica facility and the related Peñuelas LNG receiving terminal a substantially more attractive option than the replacement Combined Cycle Unit project in the same general location, as contained in the Proposed IRP.¹⁸

This assertion needs to be evaluated in the current IRP proceeding. To that effect, there are several scenarios in the Proposed IRP in which no new Combined Cycle Units buildout is required by or before 2025 and EcoEléctrica retires before the end of the proposed contract term. In these instances, the particulars of the out-year effects of the Agreements must be reviewed carefully, especially given the higher delivered gas prices relative to both, current contractual arrangements and future gas pricing, as modeled in the IRP.

Moreover, PREPA also stated that it intends to file an update in the analysis presented in the IRP Main Report in Case No. CEPR-AP-2018-0001, in order to incorporate the assumptions included in the Agreements.¹⁹ As such, the public interest is better served by making the underlying Agreements' terms an option to the Aurora model as part of the IRP evaluation process.²⁰

In order to determine whether the Agreements are economic or consistent with the Proposed IRP, additional analysis will be required that mirrors that of the analysis performed as part of the IRP evaluation process. Therefore, if additional information was to be requested under the present case, the Energy Bureau would effectively create a process parallel to the IRP evaluation process. This parallel process will evaluate assets (*i.e.* EcoEléctrica, a possible Combined Cycle Unit in the same general location and any other effects in the electric system) that are also under evaluation in the IRP process. Since the same type of analysis and model runs are used on both processes, there will be a duplicated investment of resources and efforts. In addition, there is a high risk that such parallel analyses would yield different or inconsistent results. As such, and, given the advanced

¹⁸ Petition, p. 17.

¹⁹ *Id.*, p. 19.

²⁰ PREPA evaluated the Agreements' terms under only one IRP case. This analysis also included one sensitivity regarding another gas-fired asset. However, this single case analysis is not sufficient to determine the Agreements are consistent with the Proposed IRP or that they remain economic across a variety of scenarios and circumstances.



stages of the IRP evaluation process, as discussed below, this review properly belongs in the IRP proceeding.

While paragraph (e) of Section 6.32 of Act 57-2014 gives the Energy Bureau discretion to extend the original term of thirty (30) days to review the Petition in order to perform a more in-depth evaluation of the Agreements, it is more prudent, efficient, practical and transparent to analyze the effect of the Agreements' terms as part of the IRP evaluation process. This way we will ensure a thorough and complete analysis of the Agreements' terms, and more important, we will conduct a single procedure with a specific set of assumptions that will remove the possibility of inconsistent results. This will allow the Energy Bureau to determine if the Agreements' terms are economic across several scenarios and/or cases.

c. Determination on PREPA's Petition

Section 6.32 of Act 57-2014 requires the Energy Bureau to, within thirty (30) days, evaluate the Petition against the approved IRP and the Puerto Rico Energy Public Policy, as established by Act 17-2019. The Energy Bureau also has the discretion to extend such term if needed. However, these are special circumstances in which PREPA filed its Petition while the Energy Bureau still has the Proposed IRP under consideration.

Under these circumstances, the course of action should be to dismiss PREPA's Petition without prejudice, pending the result of the IRP evaluation process. However, paragraph (e) of Section 6.32 of Act 57-2014 provides three options to the Energy Bureau: (1) to approve the Petition, (2) to declare it contrary to the public interest; or (3) to determine that it should be evaluated in depth.

Since the Agreements' terms were not considered in the evaluation process of the Approved IRP, the Energy Bureau cannot determine that the Agreements are consistent with the Approved IRP. Moreover, in the absence of a robust analysis of the Agreements' terms across different scenarios, as such scenarios are described in the Proposed IRP, and the fact that the Proposed IRP is still under the Energy Bureau's consideration, we cannot determine that the Agreements are consistent with the Proposed IRP. Nor can we determine they are consistent with the Puerto Rico Energy Public Policy, since such policy establishes the requirement for the integrated planning of our electric system.²¹ As such, we cannot approve the Petition at this time.

Moreover, given the advanced stages of the IRP evaluation process, the fact that evaluating the Agreements' terms under the instant case could yield inconsistent results with those of the IRP evaluation proceeding, and that such parallel processes represent duplicate investment of resources and efforts, requesting additional information under the instant case is neither prudent nor practical.

²¹ Act 17-2019, Articles 1.5 and 1.9.



Since at this time we cannot determine the Agreements are consistent with IRP or the Energy Public Policy, given that the public interest is better served by making the underlying Agreements' terms an option to the Aurora model as part of the IRP evaluation process and given the advanced stages of such evaluation process, the only course of action under Section 6.32 of Act 57-2014 **at this time is to declare the Agreements contrary to the public interest.** However, since we are not evaluating the Petition on its merits, **the Energy Bureau makes this determination without prejudice.** As such, the Energy Bureau **grants** PREPA leave to refile its Petition, after the Energy Bureau issues a Final Resolution regarding the proposed IRP that is pending approval in the case *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.²²

Moreover, to evaluate the Agreements' terms, PREPA has the option to file in Case No. CEPR-AP-2018-0001 the documents required to conduct such evaluation. To that effect, it would make the analysis of the Proposed IRP more robust if PREPA were to file, in addition to the case runs PREPA filed in this case, at least new model runs for S3S2B, S1S2B and S5S1B (as such terms are defined in Case No. CEPR-AP-2018-0001) using the underlying Agreements' terms as an option to the Aurora model, as well as, to the extent that is wasn't done, new model runs associated with the Energy Bureau's ROI-09-01. It is possible that, based on the results of such new model runs, the Energy Bureau may require further analysis of the effect of the Agreements' terms on other scenarios or sensitivities. As always, should PREPA decide to file such information, and any other it deems necessary, under Case No. CEPR-AP-2018-0001, PREPA must also file all workpapers and supporting documentation.²³

Since the IRP evaluation process is in a very advanced stage, the Energy Bureau expects to issue a determination within the next several months. Therefore, even if the Energy Bureau initiated the parallel process described in Part III.b. of this Resolution and Order to perform a more in-depth analysis of the Petition, the time it would take to complete the IRP review process would be very similar to the time that will be required to perform such in-depth analysis. As such, analyzing the Agreements' terms as part the IRP evaluation process does not represent undue burden to the parties of the instant case or undue delay. Therefore, no harm can come to the parties of the instant case by thoroughly analyzing the Agreements' terms under the IRP process.

²² As determined in Part II of this Resolution and Order, the Energy Bureau made its determination pursuant to Section 6.32 of Act 57-2014. However, even if the provisions of Section 7.1 of Regulation 8815 were to apply, our analysis would have yielded the same result. The Energy Bureau cannot determine that the Petition is consistent with the Approved IRP or the Proposed IRP currently under its consideration under Case No. CEPR-AP-2018-0001. Therefore, under the provisions of Section 7.1 of Regulation 8815, if applicable, the Energy Bureau would have rejected and denied the Petition, without prejudice, and would have also granted PREPA leave to refile its Petition, after the Energy Bureau issues a Final Resolution regarding the proposed IRP that is pending approval in the case *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.

²³ Intervenors in the IRP who would like to review these documents as part of Case No. CEPR-AP-2018-0001 must file a request to do so and must indicate a willingness to execute a Non-Disclosure Agreement. This will protect against the release of sensitive pricing information to competitors of EcoEléctrica and Naturgy.



IV. PREPA's request for confidential treatment

As stated before, in its Petition, PREPA requested the Energy Bureau to grant confidential treatment to all documents included therein. PREPA argued that such documents contain information that qualifies as proprietary and as trade secrets.²⁴ According to PREPA, the referenced information is protected under Puerto Rico law, specifically Act 80-2011²⁵ and Section 6.15 of Act 57-2014.²⁶

In support of its argument, PREPA stated that:

As a public body whose costs are ultimately borne by citizens of Puerto Rico, PREPA has a strong interest in protecting both its own trade secrets and the trade secrets of actual and prospective vendors and contractors, such as EcoEléctrica and Naturgy, which entrust PREPA with such information in confidence as part of business and financial dealings. The information concerning pricing, dispatch, nomination procedures and the like incorporated into the proposed agreements with EcoEléctrica and Naturgy is proprietary, commercially sensitive and qualifies as trade secrets from the perspective of all parties involved. The disclosure of this information could place PREPA in a competitive disadvantageous position in dealing with other prospective electric power and natural gas suppliers, and therefore could impair PREPA's ability to acquire electric energy, capacity and fuel from the markets at the lowest costs, ultimately harming customers. Similarly, the disclosure of this information could adversely affect Naturgy in its negotiation of LNG and natural gas supply agreements with third parties.²⁷

Section 3 of Act 80-2011 defines a trade secret as any information that "(a) ... has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information, and (b) for which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality." Moreover, Act 57-2014 establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment for any information that the submitting party understands deserves such protection.²⁸

²⁴ Petition, p. 19.

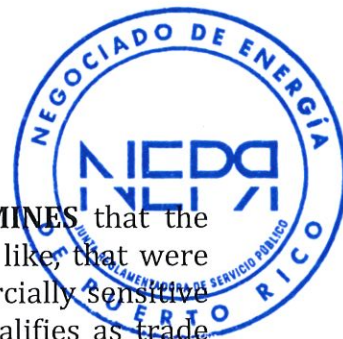
²⁵ Known as *The Puerto Rico Industrial and Trade Secret Protection Act*, as amended.

²⁶ Petition, p. 19.

²⁷ *Id.*

²⁸ Act 57-2014, § 6.15.





Upon reviewing PREPA's arguments, the Energy Bureau **DETERMINES** that the information concerning pricing, dispatch, nomination procedures and the like, that were incorporated into the Petition and its attachments, is proprietary, commercially sensitive and unavailable through regular means. Therefore, such information qualifies as trade secrets, as defined in Section 3 of Act 80-2011. As such, pursuant to Section 6.15 of Act 57-2014, the Energy Bureau **GRANTS** PREPA's request for confidential treatment of such information contained in the Petition and its attachments. However, PREPA must submit redacted versions of the Petition and its attachments that are consistent with this determination. Such redacted versions will be published in the public docket of the instant case.

V. Conclusion

For all of the above, the Energy Bureau **DETERMINES, without prejudice**, that **at this time**, the proposed Agreements are contrary to the public interest. As such the Petition is **DENIED, without prejudice**. The Energy Bureau **GRANTS PREPA leave to refile its Petition** after the Energy Bureau issues a Final Resolution regarding the proposed IRP that is pending approval in the case *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001. PREPA will have the opportunity to file the necessary documents for a complete analysis of the Agreements' terms, under Case No. CEPR-AP-2018-0001, as described in Part III.c. of this Resolution and Order.

Finally, the Energy Bureau **GRANTS** PREPA's request for confidential treatment of the Petition and its attachments, as described in Part IV of this Resolution and Order, and **ORDERS** PREPA to submit, within fifteen (15) days of the notification date of this Resolution and Order, redacted versions of the Petition and its attachments.

Any party adversely affected by this Resolution and Order may move for reconsideration before the Puerto Rico Energy Bureau, pursuant to Section 11.01 of Regulation 8543, and Section 3.15 of Act 38-2017. The affected party shall move for reconsideration within the term of twenty (20) days from filing this Resolution. Such request must be presented before the Bureau Clerk's Office, at World Plaza Building, 268 Ave. Muñoz Rivera, Level Ste. 202, San Juan, P.R. 00918, or electronically in the Energy Bureau's digital platform at <https://radicacion.energia.pr.gov/>.


The Energy Bureau shall consider said motion for reconsideration within fifteen (15) days of its filing. Should the Energy Bureau reject it forthright or fail to act upon it within fifteen (15) days, the term to request review shall recommence from notice of such denial, or from the expiration of the fifteen (15) day term. If a determination is made in its consideration, the term to petition for review shall commence from the date when a copy of the notice of the Energy Bureau's resolution definitively resolving the motion to reconsider is filed in the record. Such resolution shall be issued and filed in the record within ninety (90) days after the motion to reconsider has been filed. If the Energy Bureau accepts the motion to reconsider but takes no action regarding the motion within ninety (90) days of its filing, it shall lose jurisdiction on the motion and the term to file judicial review shall

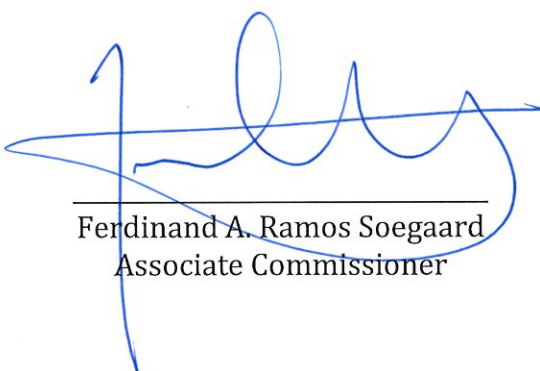
commence upon the expiration of the ninety (90)-day term, unless the Energy Bureau, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) days.

Any party adversely affected by a final resolution of the Energy Bureau may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date the copy of the notice of said resolution was filed in the record of the Energy Bureau, pursuant to Section 11.03 of Regulation 8543, Section 4.2 of Act 38-2017, and the Regulations of the Court of Appeals.

Be it notified and published.


Ángel R. Rivera de la Cruz
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on November 27, 2019. Chairman Edison Avilés Deliz, issued a dissenting opinion. I also certify that on November 27, 2019 a copy of this Resolution and Order was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com and c-aquino@prepa.com. I also certify that today, November 27, 2019, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

Puerto Rico Electric Power Authority

Nitza D. Vázquez Rodríguez

Astrid I. Rodríguez Cruz

Jorge R. Ruíz Pabón

Carlos M. Aquino Ramos

PO Box 363928

San Juan, PR 00936-3928

I sign this in San Juan, Puerto Rico, today November 27, 2019.



Wanda I. Cordero Morales
Clerk



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

CASE NO.: NEPR-AP-2019-0001

IN RE: REQUEST FOR APPROVAL OF
AMENDED AND RESTATED POWER
PURCHASE AND OPERATING
AGREEMENT WITH ECOELECTRICA
AND NATURAL GAS SALE AND
PURCHASE AGREEMENT WITH
NATURGY

SUBJECT: Resolution and Order on the
Puerto Rico Electric Power
Authority's Request for Approval of
Amended and Restated Power Purchase
Agreement with EcoEléctrica and Natural
Gas Sale and Purchase Agreement
with Naturgy; Request for Confidential
Treatment.

CHAIR EDISON AVILÉS DELIZ, dissenting

I. Introduction

The electrical system in Puerto Rico is in dire conditions. The Puerto Rico Electric Power Authority ("PREPA") is bankrupted, has no access to the capital markets and a debt of around 9.2 billion dollars. PREPA's customers are not currently paying the whole cost of the electricity they receive¹, nevertheless, they are reluctant to pay a cent more for the deficient utility service consumed, which is one of the most expensive of all the jurisdictions in the United States. Within this grotesque background, two (2) new laws were approved by the Puerto Rico Legislature. Act 120-2018² and Act 17-2019³ were adopted to transform the obsolete electrical system into a new one, in which, among other things: consumers not only purchase electricity, but also sell their excess to the grid; generation is moving from a centralized arrangement to a more distributed one; and renewable energy is expected to dominate the generation portfolio. However, implementing both Acts heavily depends on two (2) factors. First, private capital investment, and second, federal funds. The two (2) aforementioned factors are likely to

¹ See, *Restructuring Order*, CEPR-AP-2016-0001, June 21, 2016; Final Resolution and Order, CEPR-AP-2015-0001, January 10, 2015; Puerto Rico Electric Power Authority Rate Review; CEPR-AP-2015-0001/NEPR-AP-2018-0003.

² Known as *Puerto Rico Electric System Transformation Act*, as amended.

³ Known as *Puerto Rico Energy Public Policy Act*.



materialize but are not certain, at least, in a nearby future. Despite that, PREPA has been actively promoting other initiatives to reduce the cost of electricity in the Island. For example, the conversion of San Juan Plant Units 5 and 6 to dual fuel units (diesel and LNG) with estimated savings of approximately \$1,186.4 million dollars in the consumption of fuel in a period of five (5) years⁴.

II. PREPA's Petition Submitted on November 5, 2019

Alongside San Juan Plant Units 5 and 6 conversion initiative, PREPA submitted on November 5, 2019 a petition to the Puerto Rico Energy Bureau ("PREB") of the Public Services Regulatory Board, seeking the review and approval of modifications of its existing power purchase agreement with EcoEléctrica L.P. ("EcoEléctrica"), as well as the gas sale purchase agreement with Naturgy Aprovisionamientos S.A. ("Naturgy").⁵

According to the Petition:

"...[t]he agreements will yield immediate savings for Puerto Rico electric ratepayers of \$xxx⁶ million per year, according to estimates prepared by S&L. These savings exceed those the FOMB has targeted for the renegotiation of both PREPA's major PPOAs, even before PREPA has commenced efforts to renegotiate the AES PPOA."⁷

PREPA further submits that it:

"... [h]as negotiated in the ECO PPOA a reduction in the Capacity Payment relative to the current EcoEléctrica PPOA's capacity Payment that will save approximately \$xxx⁸ million annually. This amount is partially offset by an increase in the fuel cost which PREPA will bear under the

4 Resolution and Order, Case Number CEPR-AI-2018-0001, January 25, 2019.

5 PREPA attached to the Petition a proposed power purchase and operating agreement entitled Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and the Puerto Rico Electric Power Authority ("Proposed PPOA"), as well as a gas sale and purchase agreement entitled Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovisionamientos S.A. and the Puerto Rico Electric Power Authority ("Proposed GSPA"). The Proposed PPOA and the Proposed GSPA are collectively referred to as the "Proposed Agreements".

6 Regarding this amount, in the instant case, PREPA requested, and the PREB granted confidential treatment.

7 Petition, page 4.

8 Regarding this amount, in the instant case, PREPA requested, and the PREB granted confidential treatment.



Naturgy GSPA; nevertheless, the net PPOA price reduction, according to S&L, is approximately \$xx⁹ million annually. Viewed collectively, the Agreements will immediately lower the cost of power from ECO facility, already one of the Puerto Rico's lowest cost generators, by approximately x.x¹⁰ cents per kWh." ¹¹

Article 23 of the Proposed PPOA (*Qualifying Facility Status/Applicability of PURPA*)¹² provide as follows:

"23.1 Seller in its sole option may maintain the status of the facility as a Qualifying Facility. In the event that Seller elects to maintain Qualifying Facility status, this Agreement, and the purchase and sale of Net Electrical Output shall be subject to PURPA.

23.2 [In the event the facility loses its status as a Qualifying Facility pursuant to PURPA, Seller shall vigorously pursue and use reasonable efforts to reobtain Qualifying Facility status. Notwithstanding the above, should the seller be unable to obtain such status, this Agreement shall remain in full force and effect and Seller shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor applicable to the relationship between the Qualifying Facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities; provided, however, that nothing under PURPA or the regulations thereunder shall materially affect in any way the rights, duties, and obligations of the Parties under the Agreement.]^{13"}

4 After evaluating the Petition and its supporting documents, and to comply with paragraph (e) of Section 6.32 of Act 57-2014¹⁴, additional information must be requested from PREPA¹⁵ to fully and adequately evaluate the Proposed Agreements. At least, the required additional information must clarify:

9 Regarding this amount, in the instant case, PREPA requested, and the PREB granted confidential treatment.

10 Regarding this amount, in the instant case, PREPA requested, and the PREB granted confidential treatment.

11 Id., page 5.

12 Proposed PPOA, page 43.

13 "NTD: Eco reviewing QF status-related provisions."

14 Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.



1. EcoEléctrica QF status, and if the parties want the PREB to evaluate the petition considering PURPA's QF certification status. In other words, clarification of Article 23 of the Proposed PPOA.
2. More details about the analysis and the assumptions used by PREPA and its consultants to conclude that the Proposed Agreements represent savings of approximately x.x¹⁶ cents per kWh on EcoEléctrica produced generation.
3. A study, if any, in which PREPA determines its avoided cost when considering the electric output of EcoEléctrica, and how PREPA calculated it.

III. Analysis of the Statutory Framework Applicable to PREPA's Petition

a. Puerto Rico Law

On its Petition, PREPA erroneously requests the PREB to "review and approve the Agreements pursuant to Section 7.1 of Regulation 8815."¹⁷ Although I differ with the majority analysis and determination in this case, I concur with its final determination regarding the inapplicability of Regulation 8815 for the evaluation and approval of the Proposed Agreements.

If local law applies, Section 6.32 of Act 57-2014, as amended by Act 17-2019, governs the evaluation of the Proposed Agreements included as part of PREPA's Petition. Section 6.32 of Act 57-2014 provides in the relevant parts that:

(a) The Energy Bureau shall evaluate and approve all agreements between electric power service companies, including independent power producers, prior to the execution thereof. This includes, but shall not be limited to, the evaluation and approval of power purchase agreements whereby an independent power producer shall provide energy to the electric power service company responsible for operating the Electrical

¹⁵ In fact, on page 21 of the Petition, José F. Ortiz, Executive Director and Chief Executive Officer of PREPA, wrote: "[P]lease let us know if you have any questions concerning this letter or the attached Agreements."

¹⁶ Regarding this amount, PREPA requested, and the PREB granted confidential treatment.

¹⁷ Known as *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*, Regulation 8815, October 11, 2016.



System. However, when a power purchase agreement is part of a PREPA Transaction, the Energy Compliance Certificate shall suffice in accordance with the provisions of Act No. 120-2018, as amended.

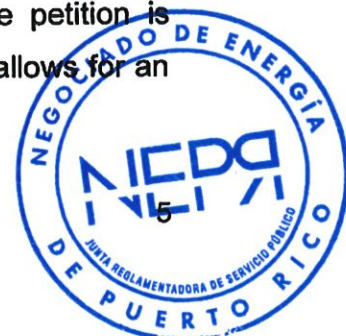
(b) The provisions of this Section shall not apply to power purchase agreements that have been entered into by the Authority prior to the approval of this Act. However, any extension of or amendment to a power purchase agreement executed prior to the approval of Act No. 57-2014 shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.

...

(d) In evaluating every proposal for an agreement between electric power service companies, the Energy Bureau **shall take into account the provisions of the integrated resource plan. The Energy Bureau shall not approve an agreement that is inconsistent with the Integrated Resource Plan**, particularly in all that pertains to renewable energy, distributed generation, conservation and efficiency goals established in the integrated resource plan as well as in the Energy Public Policy. (Emphasis supplied).

4 (e) The [Energy Bureau] shall have thirty (30) days after the date on which a project agreement is submitted for its review under this Section, to review it and determine (A) if it approves it, (B) if it declares it contrary to the public interest, or (C) if the project agreement should be evaluated in depth. Provided, that if the [Energy Bureau] fails to issue a resolution with one of these three possible determinations within thirty (30) days, it shall be understood that the project agreement has been approved. If the [Energy Bureau] decides that the project agreement should be evaluated in depth, it shall issue a final resolution and determine whether it approves or declares the project contrary to the public interest within a term that shall not exceed ninety (90) days. If the [Energy Bureau] fails to issue its final resolution within said ninety (90)-day term, it shall be understood that the project agreement has been approved. The resolutions issued by the [Energy Bureau] regarding the approval or declaration against the public interest of these agreements shall be posted on the [Energy Bureau's] website.

Note that Section 6.32 of Act 57-2014, as amended by Act 17-2019, requires PREB to evaluate a petition and decide on it as a standalone process taking into consideration the approved integrated resource plan at the moment the petition is made. According to Section 6.32 (e) PREB has thirty (30) days to act but allows for an



extension of up to ninety (90) days, for a total of one hundred twenty days (120) for the whole analysis and determination.¹⁸

In summary, if the PREB evaluation and approval resides within the local law, then the PREB must evaluate the terms of the Proposed Agreements considering the provisions of the Approved IRP.¹⁹ The PREB shall not approve the Proposed Agreements if they are inconsistent with the Approved IPR, in which case, the Petition must be declared against the public interest.

b. Federal Law

Even when PREPA did not expressly asked the PREB to evaluate and approve its petition under any specific federal law, it's a fact that the Proposed PPOA in its Article 23 refers to EcoEléctrica as a Qualified Facility²⁰ ("QF"). Consequently, and as the majority did in its Resolution and Order, when discarded PREPA's request to evaluate its petition under Regulation 8815 and decided to use Section 6.32 (d) of Act 57-2014, as amended by Act 17-2019 instead, the PREB can also use the Public Utilities Regulation Act of 1978 ("PURPA")²¹, if applicable, to evaluate and approve PREPA's Petition. Accordingly, it is necessary to review the applicable federal law.

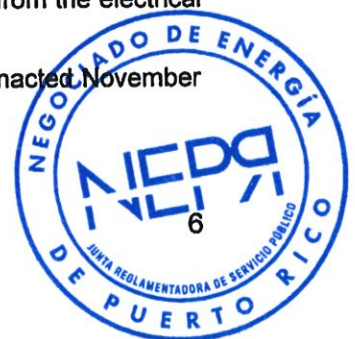
Congress enacted the PURPA as part of a legislative initiative designed to combat the nationwide energy crisis. PURPA Section 210 (a) requires the Federal Energy Regulatory Commission ("FERC") to: prescribe, and from time to time thereafter

18 The statutory language of Section 6.32 of Act 57-2014, as amended by Act 17-2019 is plain and simple, establishing an evaluation and approval process that the PREB must follow. Such process is clearly intended to be conducted within a time frame not to exceed 120 days. If the PREB does not issue a determination within such time frame, a proposed agreement must be considered as approved. One may argue that the evaluation of a proposed agreement pursuant to Section 6.32 may be conducted as part of an integrated resources plan evaluation procedure, as the majority determined in this case. However, that does not escape the specific requirement that the evaluation and approval (or denial) must be concluded within a time frame not to exceed 120 days.

19 As approved in the *PREB's Final Resolution and Order*, CEPR-AP-2015-0002, dated September 23, 2016.

20 Under PURPA, EcoEléctrica's QF status granted by FERC assures that the electric output of the facility must be included in all cases currently evaluated by the IRP. However, these assurances come attached to selling the electric output at the utility's avoided cost. The PREB is charged with determining the full avoided cost measurement used to evaluate the utility's avoided cost resulting from the electrical output of FERC certified QFs.

21 The Public Utility Regulatory Policies Act (PURPA, Pub. L. 95-617, 92 Stat. 3117, enacted November 9, 1978).



revise, such rules as it determines necessary to encourage cogeneration and small power production. FERC rules require electric utilities to offer to:

1. sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and
2. purchase electric energy from such facilities.

PURPA section 210 (b) provides guidelines for adopting rules for utility purchases of electric energy from QF. According to the guidelines, the rates for such purchase:

1. shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and
2. shall not discriminate against qualifying cogenerators or qualifying small power producers.

On the other hand, according to FERC, no such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy. PURPA section 210 (d) defines incremental cost of alternative electric energy as the utility's cost for electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

FERC issued Orders Number 69 and 70²² fulfilling PURPA's rulemaking mandate. The FERC rules obligate the host electric utility to purchase the electric energy and capacity made available from qualifying cogeneration and small power production facilities at a rate equal to the utility's full-avoided cost (emphasis provided). The rules define avoided costs to mean the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. This definition of avoided cost equals the definition of incremental cost in PURPA section 210 (d) and thus establishes a rate equal to PURPA's maximum. Another FERC rule defining avoided costs allows QF the option to either provide energy as the QF

²² Orders 69 and 70 have been amended. See: <https://www.ferc.gov/industries/electric/gen-info/qual-fac/orders.asp>. (Last visited on November 24, 2019).



determines such energy to be available for such purchases, in which case, the rates for such purposes shall be based on the purchasing utility's avoided costs calculated at the time of delivery, or provide energy or capacity under a legally enforceable obligation for the delivery of energy capacity over a specified term, in which case the rates of such purchases shall, at the option of the QF exercised before the beginning of the specified term, be based on either the avoided cost calculated at the time of delivery or at the time the obligation is incurred. FERC gave responsibility for adopting avoided costs to state public utility commissions²³ ²⁴. However, the FERC did outline several criteria²⁵ to be considered in defining appropriate purchase rates.

In 2005, Congress enacted the Energy Policy Act²⁶ (EPAAct), which amended PURPA's mandatory purchase obligations for certain QF. The amendment imposes mandatory obligation upon utilities for only those QF without non-discriminatory access to the electricity markets. If a public utility commission fails to implement FERC's regulation, FERC has the authority to compel the public utility commissions for implementing its regulations.

In summary, if the PREB evaluation and approval resides within the federal law, then the PREB must first define the avoided cost, and then, compare it with the terms of the Proposed PPOA. In general, only if Proposed PPOA terms guarantee rates less or equal than the defined avoided cost, the PREB can conclude that they are just and reasonable and that the public interest is protected.

c. Conclusion

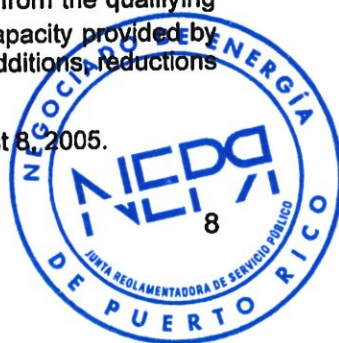
Given that the Approved IRP is still in force, and where the local law and not the federal law applies, the evaluation and approval of PREPA's petition, including its agreements, must comply with Section 6.32 (d) of Act 57-2014, as amended by Act 17-

23 Common methodologies are: Proxy Unit; Peaker Unit; Differential Revenue Requirement; IRP based Avoided Cost; Market Based Pricing; and Competitive Bidding.

24 *Consumer Power*, 472 N.W.2d at 178 (holding that Public Utilities Commissions may adjust a utility's avoided capacity cost calculation on a case by case basis.

25 These criteria include: utility cost projections; the availability of capacity or energy from the qualifying facility during peak demand periods; the relationship of the availability of energy or capacity provided by the qualifying facility to the utility's ability to avoid costs through deferrals of capacity additions, reductions in fossil fuel use, or other means; a savings related to lower line losses, and so forth.

26 Known as *Energy Policy Act of 2005*, Pub. L 109-58, 119 STAT. 594, enacted August 8, 2005.



2019, which means that they have to be considered within the context of the Approved IRP and not the one currently under evaluation as the majority concluded. But if federal law applies, the evaluation and approval do not depend or relate to the IRP, neither the approved one nor the one under evaluation by the PREB, but to the defined avoided cost. Nevertheless, the approval decision must be just and reasonable and in the public interest.

III. Confidential Treatment

In this regard, I concur with the PREB's majority analysis and determination.

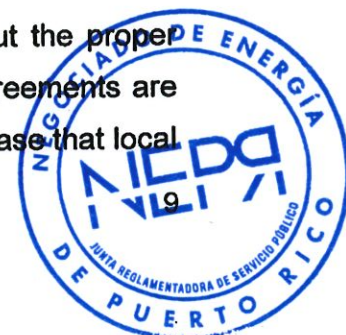
IV. Conclusion

The PREB's majority decision concludes, that "...[t]he Energy Bureau **DETERMINES, without prejudice, that at this time**, the proposed Agreements are contrary to the public interest." To support its conclusion, on Section II of the Resolution and Order, the majority rest on the applicability of local statutory and regulatory framework, disregarding not only that the public interest is best served if lower rates are achieved, but also disregarding two (2) indisputable facts, publicly known. Being the first, that Puerto Rico has an Approved IRP, and the second, that, under the PURPA, EcoEléctrica is certified by the FERC as a QF.

In its analysis, the PREB's majority fails to properly explain and justify how considering the Proposed Agreements at this time, as required by Section 6.32 of Act 57-2014, as amended by Act 17-2019, which according to PREPA are more favorable to the ratepayers, is inconsistent with the Approved IRP. The majority only argues that:

"[t]he Agreements' terms were not part of the analysis of the Approved IRP. As such, the EcoEléctrica Plant was modeled under the terms of the existing contract. Moreover, since the EcoEléctrica contract's expiration date fell outside the five-year term covered by the Action Plan of the Approved IRP, no actions were directed regarding EcoEléctrica's contract in the Approved IRP"

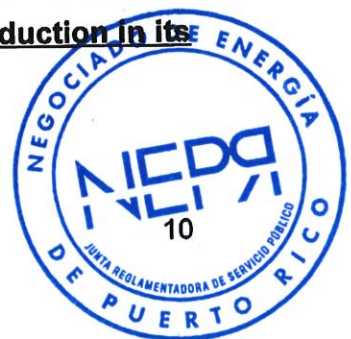
The foregoing proposition from PREB's majority disregards, without the proper evaluation and analysis, the possibility that the terms of the Proposed Agreements are much better than the ones included in the Approved IRP. Note that in the case that local



law applies, Section 6.32 of Act 57-2014, as amended by Act 17-2019, requires from the PREB that when evaluating every proposal for an agreement between electric power service companies, it shall consider the provisions of the integrated resource plan²⁷. I do not see how, if after a careful evaluation in the instant case, the PREB concludes that the terms of the proposed agreements are better than the terms considered in the Approved IRP, such proposal, that seeks to lower costs, is not in the public interest.

M Different from the majority, that decided that: "the Energy Bureau DETERMINES, without prejudice, that at this time, the proposed Agreements are contrary to the public interest. The Energy Bureau GRANTS PREPA leave to refile its Petition after the Energy Bureau issues a Final Resolution regarding the proposed Integrated Resource Plan ("IRP") that is pending approval. The Energy Bureau is currently evaluating a proposed IRP filed by PREPA on June 7, 2019, as part of the docket of the case *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001.", before making any determination on PREPA's Petition, it is my position that the PREB must require additional information from PREPA in the current procedure to be able to evaluate in depth PREPA's Petition. To be specific, among other things, the PREB must be certain of the intention of the parties expressed in Section 23 of the Proposed PPOA. Analysis of Section 23 of the Proposed PPOA is crucial to determine if the applicable law resides within local or federal statutes. If federal law is applicable, then the PREB can, as a matter of state law, once and for all, evaluate which methodology properly defines the utility's (PREPA's) avoided cost. Once the avoided cost is defined, the PREB will be able to decide if the Proposed Agreements, are just and reasonable, and in the public interest. On the other hand, if local law applies, and given that the petition to amend the existing agreement was made on November 5, 2019, then the PREB must evaluate PREPA's Petition using the Approved IRP. Doing otherwise, as the PREB's majority pretends, has no basis or support on any applicable law, and denies the battered PREPA's customer the possibility of having an immediate reduction in its

²⁷ Obviously the Approved one.



electric bill, a reduction badly needed, and which does not depend on access to, public, private nor federal funds.

Based on the facts and analysis previously discussed, I dissent from the PREB's majority decision.



Edison Avilés Deliz
Chair

In Pittsburgh, Pensilvania, for San Juan, Puerto Rico, on November 27, 2019.

