

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 Reconsideration of Resolution and Order on Denial Without Prejudice of Approval of Amended and Restated Power Purchase and Operating Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy, notifying that the Energy Bureau of the Puerto Rico Public Service Regulatory Board will consider the Request for Reconsideration filed by PREPA, pursuant to Section 3.15 of Act 38-2017.

RESOLUTION



On November 27, 2019, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("November 27 Resolution and Order") through which it determined that, pursuant to Section 6.32 of Act 57-2014,¹ the Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. ("EcoEléctrica") and the Puerto Rico Electric Power Authority ("PREPA"), and the Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos, S.A. ("Naturgy") and PREPA, (together the "Agreements"), were contrary to the public interest.²

¹ *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² Through 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*, submitted on November 5, 2019, PREPA requested the Energy Bureau to approve the Agreements pursuant to Section 7.1 of Regulation 8815, *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.

On December 9, 2019, PREPA filed before the Energy Bureau a document titled *Request for Reconsideration of Resolution and Order on Denial Without Prejudice of Approval of Amended and Restated Power Purchase and Operating Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy* ("Request for Reconsideration"). In its Request for Reconsideration, PREPA asked the Energy Bureau to reconsider the November 27 Resolution and Order.

Through this Resolution, the Energy Bureau **NOTIFIES** that it will consider the Request for Reconsideration filed by PREPA, pursuant to Section 3.15 of Act 38-2017.³ PREPA **IS NOT AUTHORIZED** to execute the Agreements while the Request for Reconsideration is pending before the Energy Bureau.

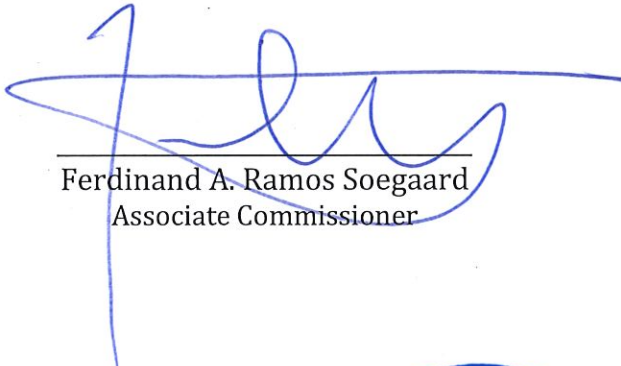
Be it notified and published.

*VER OPINION concuerda
en parte - discrepa en parte*

Edison Avilés Deliz
Chairman


Ángel R. Rivera de la Cruz
Associate Commissioner


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner



³ The Uniform Administrative Procedure of the Government of Puerto Rico Act, as amended ("LPAU").


CERTIFICATION


I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 18, 2019. Chairman Edison Aviles concurred in part and dissented in part. I also certify that on December 18, 2019 a copy of this Resolution and Order was notified by electronic mail to the following: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, n-vazquez@aepr.com and c-aquino@prepa.com. I also certify that today, December 18, 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

For the record, I sign this in San Juan, Puerto Rico, today December 18, 2019.


Wanda I. Cordero Morales
Clerk



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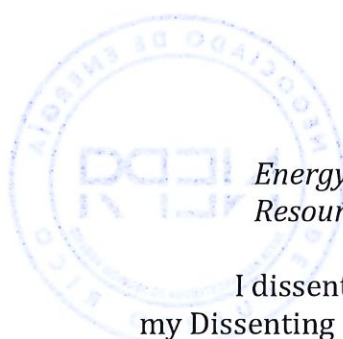
CHAIR EDISON AVILES DELIZ, concurring in part

On November 5, 2019, the Puerto Rico Electric Power Authority ("PREPA") submitted a petition ("Petition") to the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") seeking the review and approval of modifications to its existing power purchase agreement with EcoEléctrica L.P. ("EcoEléctrica") as well as the gas sale purchase agreement with Naturgy Aprovevisionamientos S.A. ("Naturgy").¹

On November 27, 2019, the majority of the Energy Bureau issued a Resolution and Order in Case No. NEPR-AP-2019-0001 ("November 27 Resolution and Order"), addressing the Petition in which it held 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*

¹ PREPA attached to the Petition a proposed power purchase and operating agreement entitled *Amended and Restated Power Purchase and Operating Agreement between Ecoelétrica, 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 Aprovevisionamientos 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".



Energy Bureau issues a Final Resolution regarding the proposed Integrated Resource Plan ("IRP") that is pending approval...²

I dissented from the Energy Bureau's majority November 27 Resolution and Order. In my Dissenting Opinion, I clearly stated that:

...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. ...³ (Emphasis in the original).

I further explained 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.^{4 5}

On December 9, 2019, PREPA requested the reconsideration of the November 27 Resolution and Order.⁶ As a remedy, PREPA requested the Energy Board to determine that the Proposed Agreements have been approved due to its failure to evaluate the Proposed Agreements within the time frame prescribed by Article 6.32 of Act 57-2014. More specifically, PREPA requested the Energy Bureau to:

...reconsider its Resolution and Order and determine that the Agreements have been approved given PREB's failure to evaluate on the merits within the time frame required by law. PREB had the ministerial duty to evaluate and approve the Agreements submitted by PREPA within the 30-day period

² Resolution and Order, Case No. NEPR-AP-2019-0001, November 27, 2019, pp. 2-3.

³ Chair Edison Avilés-Deliz, dissenting opinion, Case No. NEPR-AP-2019-0001, November 27, 2019, pp. 10-11.

⁴The 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.

⁵ Chair Edison Avilés-Deliz, dissenting opinion, Case No. NEPR-AP-2019-0001, November 27, 2019, pp. 5-6.


⁶ See Request for Reconsideration of Resolution and Order on Denial without Prejudice of Approval of Amended and Restated Power Purchase and Operating Agreement with EcoElectrica and Natural Gas Sale and Purchase Agreement with Naturgy ("PREPA's Reconsideration").



*established in paragraph (e) of Section 6.32. As discussed above, nothing in Section 6.32 of Act 57-2014 as amended limited PREB's duty to evaluate the Agreement before final Approval of the modified IRP. PREB had the responsibility to evaluate whether the transaction was in accordance with the Puerto Rico Energy Public Policy and not inconsistent with the IRP. The approval of the Agreements is in the best interest of the Public given their compliance with the energy public policy, their consistency with the current and modified IRP and their compatibility with the penetration of renewables as required by Act 17-2019."*⁷

Today, the majority of the Energy Bureau issued a Resolution and Order to entertain PREPA's Reconsideration. Although I concur with the majority's determination, I disagree with the part of the Resolution and Order through which the Energy Bureau intends to prevent PREPA from executing the Proposed Agreements while PREPA's Reconsideration is pending. A motion for reconsideration is filed before an adjudicative forum primarily seeking the re-evaluation of its determination, since the movant understands that the determination of the forum is to some extent erroneous. Therefore, under the consideration of the forum in a reconsideration procedure is solely its initial determination, nothing more, nothing less. In the November 27 Resolution and Order, the Energy Bureau did not expressly prevent PREPA from executing the Proposed Agreements. In view of this, it is my position that the Energy Bureau does not have authority to expand the scope of the November 27 Resolution and Order through the Resolution and Order pursuant to which it decided to entertain PREPA's Reconsideration. In sum, the Energy Bureau only had to decide whether it would consider PREPA's Reconsideration, it was not necessary to express anything else about it.

For all the reasons expressed herein, I concur in part.



Edison Avilés-Deliz
Chair

In San Juan, Puerto Rico, on December 17, 2019.



⁷ PREPA's Reconsideration, pp. 13-14.