

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

NEPR  
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IN RE: PUERTO RICO ELECTRIC  
POWER AUTHORITY INTEGRATED  
RESOURCE PLAN

CASE NO. CEPR-AP-2018-0001

SUBJECT: OPPOSITION TO MOTION  
TO COMPEL DISCOVERY FILED BY  
LOCAL ENVIRONMENTAL  
ORGANIZATIONS

**AES PUERTO RICO'S OPPOSITION TO THE  
LEOS' MOTION TO COMPEL DISCOVERY RESPONSES**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

AES Puerto Rico ("AES-PR") submits this opposition to the Motion to Compel Complete Discovery Responses by AES-PR ("Motion") filed on February 10, 2020 by the Local Environmental Organizations ("LEOs"). The LEOs' motion should be summarily denied.

First, the LEOs have filed their Motion based upon the assertion that they have raised the issues in their Motion to AES-PR and that AES-PR failed to respond. This assertion is not true.

This discovery issue began when the LEOs failed to serve their Requests of Information ("ROIs") on AES-PR before discovery closed on November 13, 2019. Rather than contact AES-PR to inquire, the LEOs filed a motion to compel, which they likewise failed to serve on AES-PR.<sup>1</sup> Once the LEOs rectified these errors and served their ROIs on AES-PR (on December 18, 2019), AES-PR agreed to and did respond to the untimely served discovery on January 10, 2020. *See* Response of AES Puerto Rico, L.P. to First Request of Information from Intervenor, Local Environmental Organizations, to Intervenor, AES Puerto Rico L.P. (Jan. 10, 2020) ("Responses"). The LEOs raised no issue with AES-PR's Responses for two weeks. Then on January 23, 2020,

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<sup>1</sup> *See* Resolution and Order, CEPR-AP-2018-0001 at 1 n.3 (Dec. 17, 2019) ("Upon review of the recipients of the electronic mail, the Energy Bureau noted that the legal counsel of AES-PR was not included.")

the LEOs sent a brief email to AES-PR asking for follow up on just five of their 60 ROIs. The very next day, AES-PR promptly reached out to the LEOs by phone and email to discuss the points raised by the LEOs. **Exhibit A.** The LEOs did not respond. Thus, the premise of the LEOs' motion and their claim that "AES-PR has not responded to LEOs' email request," is simply incorrect. This is a sufficient basis to deny the motion.

Second, in addition to failing to respond to AES-PR's outreach to discuss the discovery, the LEOs also failed to raise any questions regarding the sufficiency of AES-PR's discovery responses during the week-long hearing. Both AES-PR and the LEOs appeared at the hearing before the Bureau on February 3 to February 7. Counsel for AES-PR and the LEOs were present for the entire hearing, sat next to each other or at the same table the entire week, and had conversations during the breaks in the proceedings. Nonetheless, counsel for LEOs *never once* approached AES-PR to discuss the sufficiency of AES-PR's Responses to the ROIs or to respond to AES-PR's January 23 email. Nor did the LEOs raise any issues with AES-PR's discovery with the Commissioners at the hearing (despite raising other discovery issues and requests for information). The LEOs also did not question either of AES-PR's witnesses about AES-PR's discovery responses – or any other related matters. And finally, during the course of hearing, when the Bureau asked if there were outstanding requests for information, again, the LEOs did not raise or indicate they had any issue with AES-PR's ROI Responses.

Quite simply, the LEOs have had ample opportunity to raise any issues they had with AES-PR's Responses. They chose not to and thus have waived any ability to raise them now. The LEOs provide no explanation why they (1) did not respond to AES-PR's attempt to address the issue, (2) did not speak to counsel for AES-PR at the hearing about the issue, (3) did not ask any

question to AES-PR's witnesses about the discovery, and (4) did not raise any issues with AES-PR's Responses to the Bureau during the hearing.

Third, the motion should be denied as untimely because discovery is closed and the evidentiary hearing is over. As the LEOs recognize, discovery is used to "obtain evidence to be used in the trial." *Rivera y Otros v. Bco. Popular*, 152 D.P.R. 140, 152 (2000). There is no basis to bring a motion to compel *after* trial has passed. The Supreme Court of Puerto Rico has stated that "[a] party has no right to make a case have eternal life in court while keeping the other party in uncertainty." *Dávila v. Hosp. San Miguel, Inc.*, 117 D.P.R. 807, 816 (1986). "[T]he party that requests discovery after the discovery period is over must also show that said discovery is necessary to adequately present its case and that no unnecessary delays or prejudices will be caused to any party." *Lluch v. España Service Sta.*, 117 D.P.R. 729, 747 (1986) (requiring party to justify late requests). The LEOs have failed to make any such showing.

For the foregoing reasons, AES-PR urges the Bureau to deny the LEO's Motion summarily and believes there is no need to respond in detail to each particular and belated demand made in the Motion. If the Bureau is to consider the motion on the merits, AES-PR requests leave to submit a more complete opposition. At this time, AES-PR brings three salient points to the Bureau's attention, which likewise provide sufficient bases to deny the Motion.

First, the January 23, 2020 email from the LEOs to AES-PR identified *only five* ROI Responses for which they sought additional information, *not the 12* ROI Responses listed in its Motion. The seven not previously raised are AES-PR's responses to LEOs' ROIs 22, 36, 39, 40, 45, 51 and 54 and correspond to paragraphs 9, 12, 14-18 of the Motion. As made clear during the hearing, the Bureau provided ample time for parties to raise any discovery issues through the usual meet and confer process in advance of the hearing. As the Motion raises new discovery issues for

the very first time, it should be rejected out of hand. The LEOs have unquestionably waived any ability to challenge these AES-PR Responses.

Second, with regard to the five responses referenced in its January 23, 2020, email and in its Motion (LEOs' ROIs 18, 27, 35, 38, 55), AES-PR has already addressed each Request fully. For example, AES-PR objected, but then responded fully to the LEOs' ROIs 18 and 27. If the LEOs had any good faith basis to believe that these two responses were anything less than truthful, complete and sufficient, they could have questioned AES-PR's witnesses, including regarding any alleged "source" documents they claim to seek in their Motion.

As to the other three requests (LEOs' ROIs 35, 38, and 55), AES-PR properly objected to those ROIs because the LEOs had requested irrelevant and privileged information – and the LEOs' Motion offers no evidence to the contrary. While the LEOs' ROIs as a general matter sought irrelevant information, these ROIs in particular requested backward looking data on fuel quality (ROI 35), privileged and confidential information regarding AES-PR's internal valuation of its plant (ROI 38), and information regarding whether or not an entity that is not a party to this proceeding has participated in an RFP to provide electric equipment or services (ROI 55). None of this information is relevant to the sole question presented to this Bureau in this proceeding – whether or not to approve the Integrated Resource Plan advanced by PREPA as the roadmap for Puerto Rico's energy future.

Accordingly, AES-PR respectfully requests that the Bureau deny the LEOs' Motion. If the Bureau is inclined to consider each of the ROIs raised in the Motion on its merits, AES-PR asks the Bureau to allow AES-PR a brief amount of additional time to respond more fully to each of the ROIs put at issue.

**RESPECTFULLY SUBMITTED.**

## CERTIFICATE OF SERVICE

We certify that this Motion was submitted to the Puerto Rico Energy Bureau through its electronic filing tool at <https://radicacion.energia.pr.gov>, sent via email to [wcordova@energia.pr.gov](mailto:wcordova@energia.pr.gov), [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [legal@energia.pr.gov](mailto:legal@energia.pr.gov); [sugarte@energia.pr.gov](mailto:sugarte@energia.pr.gov) and [viacaron@energia.pr.gov](mailto:viacaron@energia.pr.gov), and sent to the Puerto Rico Electric Power Authority through the following email addresses: Katiuska Bolaños ([kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law)); Nitza D. Vázquez Rodríguez ([n-vazquez@aeepr.com](mailto:n-vazquez@aeepr.com)); Carlos M. Aquino Ramos ([c-aquino@prepa.com](mailto:c-aquino@prepa.com)); Astrid I. Rodríguez Cruz ([astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com)); Jorge R. Ruíz Pabón ([jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com)), and Maralíz Vázquez ([mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law)). We also certify that on this date we sent a copy of this motion to: [rtorbert@rmi.org](mailto:rtorbert@rmi.org); [victorluisgonzalez@yahoo.com](mailto:victorluisgonzalez@yahoo.com); [corey.brady@weil.com](mailto:corey.brady@weil.com); [presidente@ciapr.org](mailto:presidente@ciapr.org); [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [csanchez@energia.pr.gov](mailto:csanchez@energia.pr.gov); [ireyes@energia.pr.gov](mailto:ireyes@energia.pr.gov); [asanz@energia.pr.gov](mailto:asanz@energia.pr.gov); [bmulero@energia.pr.gov](mailto:bmulero@energia.pr.gov); [nnunez@energia.pr.gov](mailto:nnunez@energia.pr.gov); [gmaldonado@energia.pr.gov](mailto:gmaldonado@energia.pr.gov); [sierra@arctas.com](mailto:sierra@arctas.com); [tonytorres2366@gmail.com](mailto:tonytorres2366@gmail.com); [cfl@mcvpr.com](mailto:cfl@mcvpr.com); [gnr@mcv.com](mailto:gnr@mcv.com); [info@liga.coop](mailto:info@liga.coop); [amaneser2020@gmail.com](mailto:amaneser2020@gmail.com); [hrivera@oipc.pr.gov](mailto:hrivera@oipc.pr.gov); [jrivera@cnslpr.com](mailto:jrivera@cnslpr.com); [carlos.reyes@ecoelectrica.com](mailto:carlos.reyes@ecoelectrica.com); [ccf@tcmrslaw.com](mailto:ccf@tcmrslaw.com); [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); [acarbo@edf.org](mailto:acarbo@edf.org); [rstgo2@gmail.com](mailto:rstgo2@gmail.com); [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org); [jluebkmann@earthjustice.org](mailto:jluebkmann@earthjustice.org); [acasellas@amgprlaw.com](mailto:acasellas@amgprlaw.com); [loliver@amgprlaw.com](mailto:loliver@amgprlaw.com); [epo@amgprlaw.com](mailto:epo@amgprlaw.com); [robert.berezin@weil.com](mailto:robert.berezin@weil.com); [marcia.goldstein@weil.com](mailto:marcia.goldstein@weil.com); [jonathan.polkes@weil.com](mailto:jonathan.polkes@weil.com); [gregory.silbert@weil.com](mailto:gregory.silbert@weil.com); [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com); [maortiz@lvprlaw.com](mailto:maortiz@lvprlaw.com); [rnegron@dnlawpr.com](mailto:rnegron@dnlawpr.com); [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com); [rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org); [castrodiappalaw@gmail.com](mailto:castrodiappalaw@gmail.com); [voxpopulix@gmail.com](mailto:voxpopulix@gmail.com); [paul.demoudt@shell.com](mailto:paul.demoudt@shell.com); [sproctor@huntonak.com](mailto:sproctor@huntonak.com); [giacribbs@huntonak.com](mailto:giacribbs@huntonak.com); [javier.ruajovet@sunrun.com](mailto:javier.ruajovet@sunrun.com); [escott@ferraiuoli.com](mailto:escott@ferraiuoli.com); [mgrpcorp@gmail.com](mailto:mgrpcorp@gmail.com), and [aconer.pr@gmail.com](mailto:aconer.pr@gmail.com).

In San Juan, Puerto Rico, on February 12, 2020.

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**From:** Manuel A. Pietrantonni <[mpietrantonni@mpmlawpr.com](mailto:mpietrantonni@mpmlawpr.com)>  
**Sent:** Friday, January 24, 2020 8:04 PM  
**To:** Raghu Murthy <[rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org)>; Alana Pagan <[apagan@mpmlawpr.com](mailto:apagan@mpmlawpr.com)>  
**Cc:** [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org); [jluebkemann@earthjustice.org](mailto:jluebkemann@earthjustice.org); [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com); [rstgo2@gmail.com](mailto:rstgo2@gmail.com)  
**Subject:** RE: AES-PR's Response to LEO's First Request of Information

Hi Mr. Murthy, we're discussing this matter with our client. In the meantime, may I ask why you need this information?

Thank you and kind regards,

Manuel

**MANUEL A. PIETRANTONI**

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**From:** Raghu Murthy <[rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org)>  
**Sent:** Thursday, January 23, 2020 9:09 PM  
**To:** Alana Pagan <[apagan@mpmlawpr.com](mailto:apagan@mpmlawpr.com)>; Manuel A. Pietrantonni <[mpietrantonni@mpmlawpr.com](mailto:mpietrantonni@mpmlawpr.com)>  
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**Subject:** RE: AES-PR's Response to LEO's First Request of Information

Ms. Pagan, Mr. Pietrantonni:

Thank you for these discovery responses. My clients have a few follow up questions. Would it be possible for you to provide a response in the next two days?

- Follow up to #18: Please provide the source document for the statement that AES-PR had an inventory of approximately 357,000 short tons of Agremax as of December 31, 2019.
- Follow up to # 27: Please provide the source document for Agremax's plan to reduce its on-site inventory to approximately 100,000 tons (or approximately 90 days of inventory) by the end of June 2020.
- Follow up to #35: Local Environmental Organizations contend that the requested information is relevant to this proceeding because AES fuel quality for the past five years, and the documentation supporting these figures, are critical to understanding the health impacts on communities surrounding the AES-PR power plant, and the communities near the inventories of AES fuel ash and Agremax. Puerto Rico law requires that the IRP take these health impacts into account, when considering the continued operation of AES-PR.

- Follow up to #38: Local Environmental Organizations contend that the requested information is relevant to this proceeding because under the PPOA, valuation of the AES plant is relevant to determining the costs of contract termination.
- Follow-up to #55: Local Environmental Organizations contend that the requested information is relevant to this proceeding, because electric equipment and services offered by Fluence in response to an RFP could satisfy the needs identified in the IRP.

Call or email me anytime to discuss further,

Raghu Murthy  
Earthjustice  
212.823.4991

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**From:** Alana Pagan <[apagan@mpmlawpr.com](mailto:apagan@mpmlawpr.com)>

**Sent:** Friday, January 10, 2020 7:16 PM

**To:** [wordero@energia.pr.gov](mailto:wordero@energia.pr.gov); [secretaria@energia.pr.gov](mailto:secretaria@energia.pr.gov); [legal@energia.pr.gov](mailto:legal@energia.pr.gov); [sugarte@energia.pr.gov](mailto:sugarte@energia.pr.gov); [viacaron@energia.pr.gov](mailto:viacaron@energia.pr.gov); [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law); [n-vazquez@aeepr.com](mailto:n-vazquez@aeepr.com); [c-aquino@prepa.com](mailto:c-aquino@prepa.com); [astrid.rodriguez@prepa.com](mailto:astrid.rodriguez@prepa.com); [jorge.ruiz@prepa.com](mailto:jorge.ruiz@prepa.com); [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law); [rtorbert@rmi.org](mailto:rtorbert@rmi.org); [victorluisgonzalez@yahoo.com](mailto:victorluisgonzalez@yahoo.com); [corey.brady@weil.com](mailto:corey.brady@weil.com); [presidente@ciapr.org](mailto:presidente@ciapr.org); [csanchez@energia.pr.gov](mailto:csanchez@energia.pr.gov); [ireyes@energia.pr.gov](mailto:ireyes@energia.pr.gov); [asanz@energia.pr.gov](mailto:asanz@energia.pr.gov); [bmulero@energia.pr.gov](mailto:bmulero@energia.pr.gov); [nnunez@energia.pr.gov](mailto:nnunez@energia.pr.gov); [gmaldonado@energia.pr.gov](mailto:gmaldonado@energia.pr.gov); [sierra@arctas.com](mailto:sierra@arctas.com); [tonytorres2366@gmail.com](mailto:tonytorres2366@gmail.com); [cfl@mcvpr.com](mailto:cfl@mcvpr.com); [gnr@mcv.com](mailto:gnr@mcv.com); [info@liga.coop](mailto:info@liga.coop); [amaneser2020@gmail.com](mailto:amaneser2020@gmail.com); [hrivera@oipc.pr.gov](mailto:hrivera@oipc.pr.gov); [jrivera@cnspr.com](mailto:jrivera@cnspr.com); [carlos.reyes@ecoelectrica.com](mailto:carlos.reyes@ecoelectrica.com); [ccf@tcmrslaw.com](mailto:ccf@tcmrslaw.com); [manuelgabrielfernandez@gmail.com](mailto:manuelgabrielfernandez@gmail.com); [acarbo@edf.org](mailto:acarbo@edf.org); [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com); Raghu Murthy <[rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org)>; [rstgo2@gmail.com](mailto:rstgo2@gmail.com); Laura Arroyo <[larroyo@earthjustice.org](mailto:larroyo@earthjustice.org)>; Jordan Luebkekmann <[jluebkekmann@earthjustice.org](mailto:jluebkekmann@earthjustice.org)>; [acasellas@amgprlaw.com](mailto:acasellas@amgprlaw.com); [loliver@amgprlaw.com](mailto:loliver@amgprlaw.com); [epo@amgprlaw.com](mailto:epo@amgprlaw.com); [robert.berezin@weil.com](mailto:robert.berezin@weil.com); [marcia.goldstein@weil.com](mailto:marcia.goldstein@weil.com); [jonathan.polkes@weil.com](mailto:jonathan.polkes@weil.com); [gregory.silbert@weil.com](mailto:gregory.silbert@weil.com); [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com); [maortiz@lvprlaw.com](mailto:maortiz@lvprlaw.com); [rnegron@dnlawpr.com](mailto:rnegron@dnlawpr.com); [castrodiappalaw@gmail.com](mailto:castrodiappalaw@gmail.com); [voxpulix@gmail.com](mailto:voxpulix@gmail.com); [paul.demoudt@shell.com](mailto:paul.demoudt@shell.com); [sproctor@huntonak.com](mailto:sproctor@huntonak.com); [giacribbs@huntonak.com](mailto:giacribbs@huntonak.com); [javier.ruajovet@sunrun.com](mailto:javier.ruajovet@sunrun.com); [escott@ferraiuoli.com](mailto:escott@ferraiuoli.com); [mgrpcorp@gmail.com](mailto:mgrpcorp@gmail.com); [aconer.pr@gmail.com](mailto:aconer.pr@gmail.com)

**Cc:** [mpietrantoni@mpmlawpr.com](mailto:mpietrantoni@mpmlawpr.com)

**Subject:** AES-PR's Response to LEO's First Request of Information

All,

On behalf of AES-Puerto Rico, attached please find the "Response of AES Puerto Rico, L.P. to First Request of Information from Intervenor, Local Environmental Organizations, to Intervenor, AES Puerto Rico L.P." If you have any comments or questions, please do not hesitate to contact me.

Kind regards,

Alana Pagán  
Marini Pietrantoni Muñiz LLC