

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



IN RE: REQUEST FOR INTERPRETATIVE
RESOLUTION; CROWLEY LNG PUERTO
RICO, LLC - PETITIONER

CASE NO.: NEPR-IR-2019-0001

SUBJECT: Crowley's Request for
Interpretative Resolution.

RESOLUTION

I. Introduction.

On December 23, 2019, Crowley LNG Puerto Rico, LLC ("Crowley") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document through which it requested the Energy Bureau to issue an Interpretative Resolution regarding certain provisions of Act 60-2019¹ ("Request"). Crowley submitted its Request pursuant to Article 6.3 of Act 57-2014² and the Energy Bureau's February 6, 2019 Resolution in Case No. NEPR-MI-2019-0001.³

In its Request, Crowley states that Chapter 7 of Act 60-2019, "provides that any business involved in the production of Highly Efficient Energy or the construction and installation of equipment used in a Highly Efficient Generation Systems can request a tax decree from the Department of Economic Development and Commerce of Puerto Rico."⁴ According to Crowley, the Energy Bureau needs to define and/or clarify the term "Highly Efficient Generation", as it applies to the operation of Combined Heat and Power ("CHP") or electrical power generating units that are commonly used in industrial and commercial settings, based on the provisions of Act 60-2019.⁵

Crowley argues that, for the purpose of Act 60-2019, the current definition of the term "Highly Efficient Generation", as adopted by the Energy Bureau on its March 20, 2019 Resolution in Case No. CEPR-MI-2016-0001 ("March 20, 2019 Resolution"),⁶ does not apply

¹ *The Puerto Rico Code of Incentives.*

² *Puerto Rico Transformation and RELIEF Act*, as amended.

³ In Re: Interpretative Resolutions, Resolution, Procedure for requesting Interpretative Resolutions before the Puerto Rico Energy Bureau, Case No. NEPR-MI-2019-0001, February 6, 2019.

⁴ Request, p. 2.

⁵ *Id.*

⁶ In Re: Highly Efficient Fossil Generation Definition, Resolution, Resolution adopting the definition of Highly Efficient Fossil Generation, Case No. CEPR-MI-2016-0001, March 20, 2019.

to the operation of CHP or electrical power generating units that are commonly used in industrial and commercial settings.⁷ In support of its argument, Crowley states that such definition only provides the requirements for the generation units owned by the Puerto Rico Electric Power Authority ("PREPA") and by third parties selling power to PREPA.⁸

According to Crowley, the current definition of the term "Highly Efficient Generation" is designed to meet the policy objectives of Act 57-2014 of ensuring the modernization and/or the efficient use of fuel in order to reduce the costs of generating electricity in Puerto Rico.⁹ As such, Crowley argues, this definition is not suitable for third parties unrelated to PREPA, for the purposes of Act 60-2019.¹⁰

Moreover, Crowley argues that the current definition of the term "Highly Efficient Generation" does not serve the needs of the industrial and commercial sector.¹¹ According to Crowley, the yearly unit total cost limit (*i.e.* total cost cannot exceed \$100/MWh), is not designed for the type of generating plant used in the private industrial and commercial sectors.¹² As part of its arguments, Crowley states that the scale of units owned by PREPA and the third parties selling power to PREPA is not an adequate reference to establish the yearly unit total cost of smaller CHP and electrical power generating units used in the industrial and commercial settings.¹³

Crowley further argues that, besides not being able to benefit from the economics of scale as larger units do, owners and operators of CHP and electrical power generating units used in the industrial and commercial settings must pay the excise tax imposed by the Puerto Rico Treasury Department for the import of fossil fuels.¹⁴ According to Crowley, this has the effect of increasing the operating costs of CHP and electrical power generating units used in the industrial and commercial settings, which makes it difficult for these units to comply with the cost limit established in the definition of the term "Highly Efficient Generation".¹⁵

⁷ Request, p. 4.

⁸ *Id.*, pp. 4 – 5.

⁹ *Id.*, p. 4.

¹⁰ *Id.*, pp. 4 – 5.

¹¹ *Id.*, p. 5.

¹² *Id.*

¹³ *Id.*, pp. 5 – 6.

¹⁴ *Id.*, p. 6.

¹⁵ *Id.*



II. Act 57-2014 and the definition of the term “Highly Efficient Generation”.

Regarding highly efficient fossil generation, paragraph (a) of Section 6.29 of Act 57-2014 establishes, in its pertinent part:

Within a term that shall not exceed five (5) years, counted from the approval date of the Puerto Rico Energy Public Policy Act, the Energy Bureau shall ensure that at least sixty percent (60%) of the electric power generated in Puerto Rico based on fossil fuels (gas, oil derivatives, oil, and others) is high efficiency, as such term is defined by the Energy Bureau. The term “high efficiency” shall include as essential factors the electric power plant or the facility’s thermal efficiency by the type of fuel used, the cost of fuel, technology, the capacity to reduce the costs of producing one (1) kilowatt-hour (kWh) of the proposed technology, and/or any other industry parameter that guarantees efficiency in energy generation, and in accordance with the Integrated Resource Plan. The percentage required under this section includes energy generated from fossil fuels sold to PREPA under power purchase agreements entered into as of the effective date of this act...

Moreover, Act 57-2014 the Statement of Motives of Act 57-2014 establishes that “the Energy Reform established herein is the most effective manner to promote initiatives and measures **that shall result in the much needed and permanent reduction of the cost of electricity**, to restructure the electric power system in the Island and to serve as a driving force to promote the economic and competitive development that the people claim for our Island.”¹⁶

Act 57-2014 also states that “[t]he high cost of energy limits our ability to stimulate the economy, strengthen small- and medium-sized business, as well as to attract private investors from abroad, develop commercial, industrial and manufacturing activities, and improve the quality of life of all Puerto Ricans.”¹⁷ Therefore, “it is imperative and compelling to enforce a thorough reform of the energy sector **that promotes the operation and administration of an efficient system at just and reasonable costs**, considering that we are an isolated jurisdiction that needs to have a safe and stable electric power grid.”¹⁸ To that effect, Act 57-2014 establishes that “[a]s part of the energy reform, the Energy [Bureau] shall adopt rules to ensure high efficiency in the generation of electricity based on fossil fuels.

¹⁶ Statement of Motives, Act 57-2014, ¶ 24. Emphasis supplied.

¹⁷ *Id.*, ¶ 2.

¹⁸ *Id.*, ¶ 3. Emphasis supplied.



This shall lead to a more efficient use of fuel and, consequently, to lower energy production costs. This, in turn, shall have an impact on the electricity bill.”¹⁹

III. Act 60-2019.

For the purpose of Chapter 7 of Act 60-2019, Paragraph (a)(14) of Section 1020.07 of Act 60-2019, defines the term “Highly Efficient Generation” as the production of electric power at a minimum of sixty percent (60%) in a highly efficient manner, as established by the Energy Bureau, in accordance with Act 57-2014, as amended. Similarly, Paragraph (a)(23) of Section 1020.07 of Act 60-2019 defines the term “Highly Efficient Energy Producer” as the operator of a Highly Efficient Generating System that generates and sells electricity at a commercial scale. Finally, Paragraph (a)(20) of Section 1020.07 of Act 60-2019 defines the term “Operator” as any person that controls, operates or administers a Production Unit, a Highly Efficient Generating System, a Sustainable Renewable Energy Source or an Alternate Renewable Energy Source.

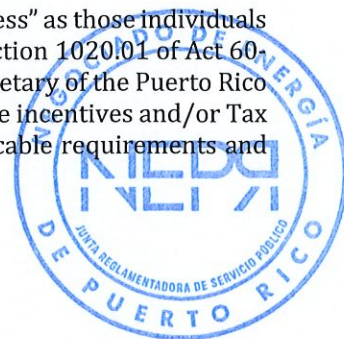
Chapter 7 of Act 60-2019 describes the eligibility criteria, tax benefits and the requirements for the concession of such benefits, related to Infrastructure and Green Energy. To that effect, Section 2071.01 of Act 60-2019 establishes that Highly Efficient Energy Producers and properties dedicated to the production of Highly Efficient Energy may be considered Eligible Business under the Act.²⁰ According to the referenced Section 2071.01, eligible Highly Efficient Energy Producers are those dedicated to the production, sale or operation at a commercial scale, may it be as owner and direct operator, the owner of a system that is operated by a third party, or as the operator of a system that is owned by a third party, in which case, both may be considered Eligible Business under Chapter 7 of Act 60-2019.

IV. Analysis.

As stated in Act 57-2014 Statement of Motives, the main purpose of the Energy Reform established therein is to provide a reliable, efficient service to PREPA’s (or its successor’s) clients, at the least cost possible. To that effect, the mandate to ensure that at least sixty percent (60%) of the electricity generation based on fossil fuels complies with the definition of the term “Highly Efficient Generation”, as such term is defined by the Energy Bureau, is applicable to all generation assets that are dedicated to supply electricity to the grid, to be distributed to PREPA’s (or its successor’s) clients.

¹⁹ *Id.*, ¶ 17. Emphasis supplied.

²⁰ Paragraph (a)(45) of Section 1020.01 of Act 60-2019 defines the term “Eligible Business” as those individuals or business activities that qualify for a Decree under the Act. Paragraph (a)(20) of Section 1020.01 of Act 60-2019 defines the term “Decree” as the concession through a contract issued by the Secretary of the Puerto Rico Department of Economic Development and Commerce granting an Eligible Business the incentives and/or Tax Credits corresponding to such Eligible Business, subject to compliance with all applicable requirements and regulations, either under the Act or prior incentives laws.



Moreover, one of the purposes of the term “Highly Efficient Generation”, as applicable under the provisions of Act 57-2014, is to promote the efficient use of fossil fuels in order to reduce generation costs and in turn, reduce customer bills.²¹ As such, the main focus of Act 57-2014 was PREPA’s generation fleet, as well as the fossil-fueled generation assets that sell electricity to PREPA (or its successor) and other fossil-fueled assets that don’t sell power to PREPA, but could sell electricity to clients using the Puerto Rico electric grid (*e.g.* through the wheeling mechanism). In other words, an integral reading of the Statement of Motives and Section 6.29 of Act 57-2014 shows that the legislative intention is for the mandate that sixty percent (60%) of the electricity generation based on fossil fuels complies with the definition of the term “Highly Efficient Generation”, as such term is defined by the Energy Bureau, to be applicable to all fossil-fueled generation assets that inject power to the Puerto Rico electric grid for the consumption of its clients.

As we stated before, the Energy Bureau adopted the definition of the term “Highly Efficient Generation” through the March 20, 2019 Resolution. The definition contained two metrics that each generation asset must meet in order for it to be classified as “highly efficient”: (1) the total operating costs or the price charged to PREPA or its successor (adjusted to 2018 dollars) shall not exceed \$100/MWh, and (2) the average annual rate of carbon dioxide emissions (in lbs/MWh), is lower than the United States national average for units with the same primary fuel type.²² The Energy Bureau also determined the mechanism to be used in order to demonstrate compliance. To that effect, the Energy Bureau established that **“PREPA and any party who owns and operates any fossil-fueled generation units that inject power to PREPA’s grid, must file its compliance report with the Energy Bureau on or before March of the year following the reporting year.”**²³

The Energy Bureau established the definition and the compliance mechanism in accordance with the provisions of Act 57-2014. As such, its main focus and applicability are the fossil-fueled generation assets that inject power to the Puerto Rico electric grid.

On the other hand, one of the main purposes of Act 60-2019 is to create a dynamic economic stimulus platform consistent with the fiscal and economic reality of Puerto Rico.²⁴ According to Act 60-2019 Statement of Motives, “[t]he new Code of Incentives prospectively amends the eligibility and benefits offered to diverse economic activities.”²⁵ The Highly

²¹ Statement of Motives, Act 57-2014, ¶ 17. Emphasis supplied.

²² March 20, 2019 Resolution, p. 6.

²³ *Id.*, p. 7. Emphasis supplied; footnote omitted.

²⁴ Statement of Motives, Act 60-2019, ¶ 6.

²⁵ *Id.*, ¶ 17. Translation provided.



Efficient Energy Producers and the properties dedicated to the production of Highly Efficient Energy, are amongst these economic activities.

Upon examining the language and provisions related to the term “Highly Efficient Generation”, as contained in Act 60-2019, the Energy Bureau construes such language as having the purpose to incentivize the development of highly efficient generation assets that produce electricity at “commercial scale”. Act 60-2019 defines the term “Production at Commercial Scale” as “[p]roduction for the sale in the market during the normal course of business, in quantities and prices that justify the operation of an Eligible Business, as an ongoing business.”²⁶

The definition of the term “Production at Commercial Scale” doesn’t constrain the size of the generation asset. In order to classify as “Production at Commercial Scale”, such asset must generate electricity in quantities and prices that justify its operation as an ongoing business. This could range from a few kWh to several thousand MWh, depending of the service that the asset will provide.

As we stated before, the current definition of the term “Highly Efficient Generation”, applies to all fossil-fueled generation assets that use the electric grid to provide service to their respective clients (*e.g.* PREPA in the form of a PPOA, or a particular customer through the wheeling mechanism). Therefore, the Energy Bureau **CONSTRUES** that the owner of an asset that uses the electric grid to provide service to its respective clients, may it be in the form of a PPOA with PREPA or a particular customer through the wheeling mechanism, can benefit from the incentives established in Act 60-2019, if such asset meets the definition of the term “Highly Efficient Generation”, as established in the March 20, 2019 Resolution.

If such entity owns more than one asset, then such assets, in the aggregate, must meet the sixty percent (60%) “Highly Efficient Generation” requirement in order to be eligible for the incentives established in Act 60-2019. To that effect, the percentage of fossil-fueled generation considered highly efficient for any reporting year is calculated dividing the total kWh from highly efficient units by the total kWh from all fossil-fueled generation units owned by the entity.

As an example, the owner of a 100 MW fossil-fueled generation asset that will be connected to the grid to sell electricity, may it be through a PPOA with PREPA or its successor, or through a wheeling arrangement, could be considered a “Highly Efficient Energy Producer” for the purposes of Act 60-2019 if such asset meets the definition of the term “Highly Efficient Generation”, as adopted by the Energy Bureau in the March 20, 2019 Resolution. If such owner has a second unit injecting power to the electric grid, say a 50 MW

²⁶ Act 60-2019, Section 1020.01(a)(59). Translation provided.



fossil-fueled generation asset, then in order to be eligible for the incentives established in Act 60-2019, both units in the aggregate must meet the sixty percent (60%) requirement.²⁷

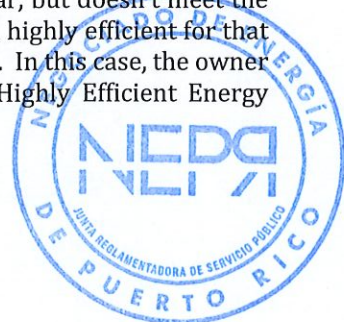
On the other hand, the Energy Bureau recognizes that there could be fossil-fueled generation assets that provide service to a specific client on site without having to use the electric grid (*e.g.* disconnected from the grid or interconnected to the grid for the purpose of exporting excess energy and providing grid services). These assets could be eligible to obtain the incentives detailed in Act 60-2019 if they meet the standards established by the Energy Bureau for such purposes. However, since these assets would not inject power to the electric grid for the purposes of selling it to clients, they would not be considered part of the generation fleet that provides services to the electric grid customers. As such, for the purposes of Act 60-2019, the current definition of the term "Highly Efficient Generation" might not be suitable for these assets.

To that effect, it is important to note that, as we expressed before, Act 60-2019 defines the term "Highly Efficient Generation" as the production of electric power at a minimum of sixty percent (60%) in a highly efficient manner, **as established by the Energy Bureau, in accordance with Act 57-2014**, as amended. The Act 60-2019 mandate is for the Energy Bureau to establish the highly efficient generation parameters that will be used to determine if an entity will benefit from the incentives established therein. However, Act 60-2019 doesn't require the Energy Bureau to use the same definition that applies to fossil-fueled generation assets that use the electric grid to provide service to its respective clients. The Act 60-2019 mandate is for the Energy Bureau to establish such parameters **in accordance with Act 57-2014**.

As we expressed before, paragraph (a) of Section 6.29 of Act 57-2014 establishes that the term highly efficient shall include as essential factors the electric power plant or the facility's thermal efficiency by the type of fuel used, the cost of fuel, technology, the capacity to reduce the costs of producing one (1) kilowatt-hour (kWh) of the proposed technology, and/or any other industry parameter that guarantees efficiency in energy generation. Although the main purpose of the definition of the term "Highly Efficient Generation", as established and described in Act 57-2014, was to promote the efficient use of fossil fuels in order to reduce generation costs and in turn, reduce customer bills, the provisions of paragraph (a) of Section 6.29 of Act 57-2014 can be used to modify such definition to meet the purposes and mandates of Act 60-2019.

For the purpose of Act 60-2019 there are two types of fossil-fueled generation assets: (i) assets that use the electric grid to provide service to their respective clients, may it be in the form of a PPOA with PREPA or a particular customer through the wheeling mechanism;

²⁷ As an example, assume the 100 MW asset produces 438 GWh in a given year and meet the definition of Highly Efficient Generation and assume the 50 MW asset produces 219 GWh in the same year, but doesn't meet the definition. Then, for this owner, the percentage of fossil-fueled generation considered highly efficient for that particular year equals to $438 \text{ GWh} / (438 \text{ GWh} + 219 \text{ GWh}) = 438 / 657 = 0.667 = 66.7\%$. In this case, the owner meets the highly efficient generation standards, therefore, may be considered a "Highly Efficient Energy Producer", for the purposes of Act 60-2019.



and (ii) fossil-fueled generation assets that provide service to its clients on site, may it be disconnected from the grid or interconnected to the grid for the purpose of exporting excess energy and providing grid services, or that provide service to its clients by using other means than the electric grid.

As expressed before, the Energy Bureau **INTERPRETS** that the owner of an asset that uses the electric grid to provide service to its respective clients, may it be in the form of a PPOA with PREPA or a particular customer through the wheeling mechanism, may benefit from the incentives established in Act 60-2019, if such asset meets the definition of the term "Highly Efficient Generation", as established in the March 20, 2019 Resolution. On the other hand, the Energy Bureau **INTERPRETS** that the definition of the term "Highly Efficient Generation", as established by the Energy Bureau in the March 20, 2019 Resolution, does not apply to fossil-fueled generation assets that provide service to its clients on site, may it be disconnected from the grid or interconnected to the grid for the purpose of exporting excess energy and providing grid services, or that provide service to its clients by using other means than the electric grid.

The Energy Bureau will soon initiate a proceeding to establish the parameters for the definition of the term "Highly Efficient Generation" that will apply to fossil-fueled generation assets that provide service to its clients on site, may it be disconnected from the grid or interconnected to the grid for the purpose of exporting excess energy and providing grid services, or that provide service to its clients by using other means than the electric grid. In establishing the proposed parameters, the Energy Bureau will take into consideration the provisions of paragraph (a) of Section 6.29 of Act 57-2014, as well as all other applicable statutes and regulations.

V. Conclusion.


The Energy Bureau **INTERPRETS** that the definition of the term "Highly Efficient Generation", as established in the March 20, 2019 Resolution, applies to all assets that use the electric grid to provide service to their respective clients, may it be in the form of a PPOA with PREPA or a particular customer through the wheeling mechanism, for the purposes of Act 60-2019. The Energy Bureau further **INTERPRETS** that the definition of the term "Highly Efficient Generation", as established by the Energy Bureau in the March 20, 2019 Resolution, does not apply to fossil-fueled generation assets that provide service to its clients on site, may it be disconnected from the grid or interconnected to the grid for the purpose of exporting excess energy and providing grid services, or that provide service to its clients by using other means than the electric grid, for the purposes of Act 60-2019.

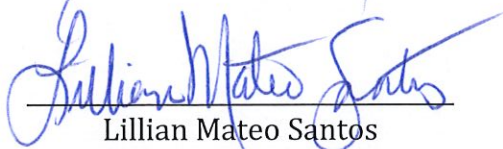
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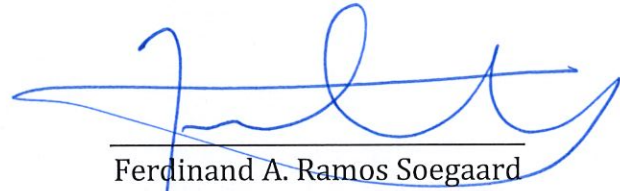
interconnected to the grid for the purpose of exporting excess energy and providing grid services, or that provide service to its clients by using other means than the electric grid.²⁸

Be it published.



Edison Avilés Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Ángel R. Rivera de la Cruz
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 March 5, 2020. I also certify that on March 5, 2020 a copy of this Resolution was notified by electronic mail to the following: jblasini@jgl.com and apico@jbl.com. I also certify that today, March 5, 2020, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to the following:

Jiménez, Graffam & Lausell
Lcdo. Jorge F. Blasini González
Lcdo. Andrés F. Pico Ramírez
PO Box 366104
San Juan, PR 00936-6104

For the record, I sign this in San Juan, Puerto Rico, today March 5, 2020.



Wanda I. Cordero Morales
Clerk

²⁸ It is important to note that Crowley proposed a definition to the term "Highly Efficient Generation" to be applied to CHP and electrical power generating units that are commonly used in industrial and commercial settings. Crowley requested the Energy Bureau to approve such proposed definition. Since the adoption of a modified definition of the term "Highly Efficient Generation" is beyond the scope of this Interpretative Resolution, it is not necessary for the Energy Bureau to address Crowley's request at this time.