

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 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.

RESOLUTION AND ORDER

I. Introduction and Procedural Background

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 the Petition, PREPA requested the Energy Bureau to approve certain agreements with EcoEléctrica L.P. ("EcoEléctrica") and Naturgy Aprovechamientos S.A. ("Naturgy"), pursuant to Section 7.1 of Regulation 8815.² Specifically, PREPA requested the Energy Bureau to approve (a) the proposed Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and PREPA ("Eco-PPOA")³ and (b) the proposed Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy

¹ See, Petition, p. 1. Although the Petition is dated November 4, 2019, it was filed before the Energy Bureau on November 5, 2019.

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 ("Regulation 8815").

³ Note that PREPA and EcoEléctrica currently have a *Power Purchase Agreement* executed in March 10, 1995 See, Contract No. 1997-AI0080, as amended ("Current Eco-PPOA").

Aprovisionamientos, S.A. and PREPA ("Naturgy-GSPA")⁴, hereinafter collectively referred to as the "Proposed Agreements".

The Petition included a narrative about technical, economic, and legal analysis whereby PREPA purported to justify the approval of the Proposed Agreements.⁵ PREPA also requested the Energy Bureau to treat and designate the Petition and its attachments as confidential documents.⁶

The Eco-PPOA proposes to extend the Current Eco-PPOA from December 2019 to September 2032 in order for EcoEléctrica to supply PREPA energy, capacity and ancillary services from its 543-megawatt combined cycle natural gas-fired cogeneration facility ("EcoEléctrica Facility"). The Naturgy-GSPA calls for Naturgy to supply natural gas to the EcoEléctrica Facility as well as natural gas to Units 5 and 6 at PREPA's 830-megawatt power generation Costa Sur facility ("Costa Sur Facility"). According to PREPA, the Proposed Agreements incorporate more favorable pricing and other terms for PREPA and the Puerto Rico ratepayers, than those in the existing agreements they will replace.⁷ PREPA also argued that the Proposed Agreements will secure important sources of reliable electric capacity and energy that will support and advance PREPA's compliance with the renewable energy public policy goals established in Act 17-2019.⁸

After evaluating the Petition pursuant to the procedure established in Article 6.32 of Act 57-2014⁹, on November 27, 2019, the Energy Bureau issued a Resolution and Order ("November 27 Resolution and Order") through which it determined that the Proposed Agreements were contrary to the public interest.¹⁰ Consequently, the Energy Bureau denied

⁴ Note that PREPA and Naturgy currently have a *Natural Gas Sale and Purchase Agreement* executed in March 28, 2012. See, Contract No. 2012-P00107, as amended ("Current Naturgy-GSPA").

⁵ The Petition also included the following documents: Annex A: *Capacity Payment Liability Risk*, Annex B: *Natural Gas Supply Interruption Risk*, Attachment 1: *Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and the Puerto Rico Electric Power Authority*, Attachment 2: *Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovisionamientos S.A. and the Puerto Rico Electric Power Authority*, Attachment 3: *PREPA Board Resolution* dated October 21, 2019 ("Board Resolution"), and Attachment 4: *Memo to PREPA CEO and IRP Team from Siemens PTI/AB* dated October 2, 2019 ("Siemens' Memorandum").

⁶ See, Petition, pp. 19-20.

⁷ *Id.*, p. 2.

⁸ Known as *The Puerto Rico Energy Public Policy Act*.

⁹ See, Act 57-2014, known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

¹⁰ See, Resolution and Order, In Re: Request for Approval of Amended and Restated Power Purchase and Operating Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy, Case No. NEPR-AP-2019-0001, November 27, 2019.



the Petition.¹¹ The Energy Bureau determined that, although it denied the Petition at that time, it will allow PREPA to refile its request, after the Energy Bureau issued a final resolution regarding PREPA's proposed Integrated Resource Plan ("Proposed IRP") that is pending evaluation and approval in Case No. CEPR-AP-2018-0001 ("Proposed IRP Proceeding").¹² To that effect, the Energy Bureau established that:¹³

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 [the November 27 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 [Proposed Agreements] as part [of] 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 [Proposed Agreements] under the IRP process.

On December 9, 2019, PREPA filed 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"). Through the Request for Reconsideration, PREPA asked the Energy Bureau to reconsider the November 27 Resolution and Order.¹⁴ In support of its request, PREPA presented several arguments, some of which were not originally included in the Petition.¹⁵

¹¹ *Id.*, p. 12.

¹² *Id.* The Energy Bureau also granted PREPA's request for confidential designation to the Petition and its attachments. *Id.* at pp. 11-12.

¹³ *Id.*, p. 10.

¹⁴ See, *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*, December 9, 2019.

¹⁵ In the Request for Reconsideration, PREPA argued that: (a) the Energy Bureau shall determine that the Proposed Agreements have been approved given the alleged Energy Bureau's failure to evaluate on the "merits" the Proposed Agreements within the time frame required by Section 6.32 of Act 57-2014; (b) PREB has a ministerial duty to evaluate and approve the Proposed Agreements within the 30-day period established in Section 6.32(e) of Act 57-2014; (c) nothing in Section 6.32 of Act 57-2014 limits the Energy Bureau's duty to evaluate the Proposed Agreements before final approval of the Proposed IRP; (d) PREB has the responsibility to evaluate whether the Proposed Agreements are in accordance with the Puerto Rico Energy Public Policy and not inconsistent with the Approved IRP; (e) the approval of the Proposed Agreements is in the best interest of the public given their: (i) compliance with the Puerto Rico Energy Public Policy, (ii) consistency with the Approved and Proposed IRPs and, (iii) compatibility with the penetration of renewables as required by Act 17



On December 13, 2019, the Energy Bureau issued its 10th Requirement of Information to PREPA ("ROI #10") in the Proposed IRP Proceeding. Through ROI #10, the Energy Bureau requested detailed information, analysis and evaluation of the relevant terms of the Proposed Agreements, in the context of the Proposed IRP Proceeding.¹⁶

While the Request for Reconsideration was pending, on December 16, 2019, EcoEléctrica filed before the Energy Bureau a document titled *Petition of EcoEléctrica, L.P. to Intervene* ("Petition to Intervene"). Through the Petition to Intervene, EcoEléctrica requested the Energy Bureau to grant it intervenor status in the instant case.

On December 18, 2019, the Energy Bureau issued a Resolution through which it notified PREPA that it will consider the Request for Reconsideration, in accordance with Section 3.15 of Act 38-2017.¹⁷

On December 19, 2019, PREPA submitted a document titled *Request for Confidential Designation of Unredacted Documents Regarding Gas Price, Projected Savings and Sargent and Lundy Report Related to the Approval of Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy and Importance of the Agreements*, ("Supplement to the Reconsideration"). As part of the Supplement to the Reconsideration, PREPA submitted the following documents: Attachment 1: *Fuel Price*, Attachment 2: *Projected Savings Per Year*, Attachment 3: *Projected Savings Presentation*, and Attachment 4: *EcoEléctrica and Naturgy Contract Renegotiations*, prepared by Sargent and Lundy, dated November 19, 2019 ("Sargent and Lundy Report").¹⁸

On December 26, 2019, PREPA filed a document titled *Motion Informing Approval by FOMB of the Puerto Rico Electric Power Authority's Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy and Request for Technical Conference to discuss Motion for Reconsideration* ("December 26

2019; (f) the Proposed Agreements are beneficial for the public and comply with the Public Policy Act of 17-2019; (g) the terms of the Proposed Agreements comply with the Puerto Rico Energy Public Policy and its assumptions are not inconsistent with the Approved IRP and are incorporated into the Proposed IRP; (h) the Proposed Agreements are necessary to comply with the PREPA's Certified Fiscal Plan; and (i) considering that EcoEléctrica is a Qualifying Facility (QF) under PURPA and Naturgy has exclusive rights to the Natural Gas Facilities Serving Costa Sur, the approval of the Proposed Agreements is essential to avoid a significant financial impact upon PREPA. See, Request for Reconsideration, pp 2 to 5. PREPA attached to the Request for Reconsideration, a copy of EcoEléctrica's application for recertification as a Qualifying Facility, allegedly filed by EcoEléctrica before the Federal Energy Regulatory Commission ("FERC") on July 9, 2019.

¹⁶ See, Letter from the Energy Bureau to PREPA, *In re: Review of Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, 10th Requirement of Information to PREPA, December 13, 2019.

¹⁷ Known as *The Uniform Administrative Procedures Act of the Government of Puerto Rico*, as amended.

¹⁸ On January 16, 2020, the Energy Bureau issued a Resolution and Order through which it granted confidential designation and treatment for the items specified in the Supplement to the Reconsideration.



Motion"). Through the December 26 Motion, PREPA notified the Energy Bureau that the Financial Oversight and Management Board for Puerto Rico ("FOMB") approved the Proposed Agreements. PREPA also requested a technical hearing to discuss the Request for Reconsideration and to answer any questions the Energy Bureau might have regarding the Proposed Agreements. As an attachment to the December 26 Motion, PREPA included a letter sent by FOMB to PREPA.¹⁹

On January 17, 2020, the Energy Bureau issued a Resolution and Order through which it granted PREPA's request for a technical conference. The technical conference was scheduled for February 14, 2020 ("February 14 Technical Conference").

On January 22, 2020, PREPA submitted its responses to ROI #10, as part of the Proposed IRP Proceeding.²⁰

On January 28, 2020, the Energy Bureau issued a Resolution through which it determined to grant EcoEléctrica some participation in the instant case.²¹ The Energy Bureau allowed EcoEléctrica to: (a) submit written comments, suggestions or any documents as it may deem necessary or helpful, and (b) provide testimony during the Technical Conference.²²

On January 29, 2020, PREPA submitted supplemental answers to ROI#10, as part of the Proposed IRP Proceeding.²³

The Energy Bureau held the February 14 Technical Conference as scheduled. PREPA and EcoEléctrica's representatives briefed the Energy Bureau about the terms of the Proposed Agreements and answered the Energy Bureau's questions. During the February 14 Technical Conference, the Energy Bureau took official notice of ROI #10 and of the Responses to ROI #10.²⁴ The Energy Bureau also ordered PREPA to provide a written summary of the *scheduling, take-or-pay* and *make-up* provisions of the Naturgy-GSPA.

¹⁹ See, Letter from FOMB to PREPA, dated December 26, 2019, *Re: EcoEléctrica and Gas Natural Aprovechamientos Contracts Amendments* ("FOMB's Letter of Approval").

²⁰ See, *The Puerto Rico Electric Power Authority's Responses to the Puerto Rico Energy Bureau's Tenth Requirement of Information*, filed on January 22, 2020 in Case No. CEPR-AP-2018-0001 ("Responses to ROI #10"). The Responses to ROI #10 included several attachments.

²¹ See, Resolution, p. 3, Case No. NEPR-AP-2019-0001, January 28, 2020.

²² *Id.*

²³ See, *The Puerto Rico Electric Power Authority's Supplemental Responses to the Puerto Rico Energy Bureau's Tenth Requirement of Information*, Case No. CEPR-AP-2018-0001, January 29, 2020.

²⁴ Accordingly, the Energy Bureau's Clerk will make these documents part of the official administrative record of the instant case. Any confidential designation and treatment granted to the Responses to ROI #10 as part of the Proposed IRP Proceeding shall remain in full force and effect in the instant case.



On February 17, 2020, PREPA filed a document titled *Motion in Compliance with Bench Order Entered on February 14, 2020* ("Motion in Compliance"). With the Motion in Compliance, PREPA included a document identified as Exhibit A: *Summary of the Scheduling, Take-Or-Pay and Make-Up Provisions Under the Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos S.A. and the Puerto Rico Electric Power Authority ('Amended-GSPA')* ("Summary of Provisions"). On the same day, PREPA filed a document titled *Request for Confidential Designation of Document Summarizing Contents of Draft Agreement* through which it requested the Energy Bureau to designate and treat the Summary of Provisions as confidential documents.

On March 9, 2019, the Energy Bureau issued a Resolution and Order to extend the ninety-day term to address the Request for Reconsideration, in accordance with the provisions of Section 3.15 of Act 38-2017. The Energy Bureau based its determination on the complexity of the analysis needed to address PREPA's Request for Reconsideration, in light of the new arguments brought therein and the new information obtained at the February 14 Technical Conference.²⁵

II. Applicable statutory and regulatory framework

In its Petition, PREPA requested the Energy Bureau to evaluate and approve the Proposed Agreements pursuant to Section 7.1 of Regulation 8815.²⁶ However, in the Request for Reconsideration, and the subsequent filings, PREPA requested the Energy Bureau to evaluate the Proposed Agreements pursuant to the provisions of Article 6.32 of Act 57-2014 as well as the Energy Public Policy established in Act 17-2019.²⁷

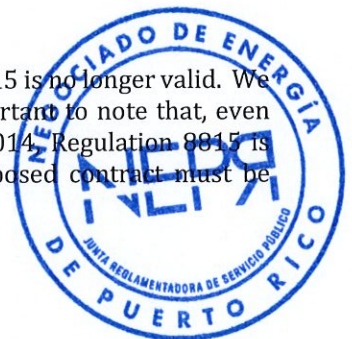
When examining the totality of the administrative record of the instant case in light of the Proposed Agreements, it is clear that the Energy Bureau has before it a petition to review amendments and extensions of agreements that were executed prior to the approval of Act 57-2014. Therefore, as discussed in detail below, such agreements shall be evaluated pursuant to the provisions of Article 6.32 of Act 57-2014. Paragraphs (a) and (b) of the referenced Article 6.32 clearly establish that, before approving its execution, the Energy Bureau must ensure that such extensions and/or amendments are consistent with the IRP and comply with the Puerto Rico Energy Public Policy, as established by Act 17-2019.²⁸

²⁵ March 9, 2020 Resolution and Order, p. 2.

²⁶ Petition, pp. 20-21.

²⁷ See generally, Request for Reconsideration and Supplement to the Reconsideration.

²⁸ Our determination shall not be construed in any way as implying that Regulation 8815 is no longer valid. We simply conclude that Regulation 8815 does not apply to the instant case. It is important to note that, even though Regulation 8815 does not include all provisions of Article 6.32 of Act 57-2014, Regulation 8815 is consistent with the referenced Article 6.32 regarding the requirement that a proposed contract must be



Article 6.3 of Act 57-2014 provides that the Energy Bureau has the power to establish and implement regulations and the necessary regulatory actions to determine the guidelines, standards, practices, and processes pertaining to purchase power agreements, as well as to modernizing power plants or electric power generation facilities.²⁹ In addition, the Energy Bureau has the power to establish and implement, through regulation, the public policy rules regarding electric power service companies, as well as any transaction, action or omission in connection with the electric power grid and the electric power infrastructure of Puerto Rico.³⁰ The Energy Bureau shall implement public policy rules that are consistent with the Energy Public Policy.³¹

Moreover, Paragraph (b) of Article 1.11 of Act 17-2019 provides that any power purchase agreement, or any amendment to, or extension of, a power purchase agreement awarded prior to the approval of Act 57-2014 between PREPA and any independent power producer, such as EcoEléctrica, shall be executed pursuant to the provisions of Article 6.32 of Act 57-2014 and the regulations adopted thereunder by the Energy Bureau.³²

In order to ensure that such agreements have an appropriate and reasonable price, the parameters established by the Energy Bureau shall be consistent with the ones normally used by the industry for such purposes, as well as any other parameter or method used to regulate revenues attributable to power purchase agreements.³³ In addition, Power Purchase Agreements shall be awarded taking into account the goals and mandates established in the Renewable Portfolio Standards, which compel the transition from energy generation from fossil fuels to an aggressive integration of renewable energy as provided in Act 82-2010.³⁴

consistent with the IRP. Moreover, Regulation 8815 provides a thorough evaluation process for the approval of a negotiated contract resulting from an RFP selection process, which is also consistent with Article 6.32 of Act 57-2014, Article 1.11 of Act 17-2019 and the general Energy Public Policy promulgated by Act 17-2019. For example, Regulation 8815, as well as Article 1.11 of Act 17-2019, consider in the evaluation of power purchase agreements, parameters such as pricing, price adjustments, price escalators, and profit margins of the agreements. The common objective of Act 17-2019 and Regulation 8815 is to ensure that such parameters are consistent with industry standards, as well as any other parameter or method used to regulate revenues attributable to power purchase agreements, in order to ensure that such agreements have an appropriate and reasonable price.

²⁹ Paragraph (c), Article 6.3 of Act 57-2014.

³⁰ Paragraph (b), Article 6.3 of Act 57-2014.

³¹ *Id.*

³² Paragraph (b), Article 1.11 of Act 17-2019.

³³ *Id.*

³⁴ *Id.*



On the other hand, Article 6.32 of Act 57-2014 provides a comprehensive statutory framework for the evaluation and approval of power purchase agreements, as well as other transactions involving electric power services companies, such as PREPA and EcoEléctrica. It reiterates the Energy Bureau's authority to adopt the necessary regulations and regulatory actions that govern the process of evaluation and approval of power purchase agreements and other transactions involving electric power services companies.³⁵ As explained before, Paragraph (b) of Article 6.32 expressly states that any extension of, or amendment to, a power purchase agreement executed prior to the approval of Act 57-2014 shall comply with the Puerto Rico Energy Public Policy Act and shall be subject to the approval of the Energy Bureau.³⁶

In evaluating a proposal for an agreement between electric power service companies, the Energy Bureau shall consider the IRP. Agreements inconsistent with the IRP shall not be approved.³⁷

III. Analysis

A. Proposed Agreements Consistency with the Integrated Resource Plan ("IRP")

An IRP takes into consideration all reasonable resources needed to supply demand over a given planning period, which in our case is twenty (20) years.³⁸ On September 23, 2016, the Energy Bureau approved PREPA's first IRP.³⁹ The first IRP became enforceable on March 13, 2017 and is considered the approved IRP.⁴⁰ Due to the effects Hurricanes Irma and María had on the electric power system, on March 14, 2018 the Energy Bureau determined that a revision of PREPA's Approved IRP was warranted.⁴¹ Accordingly, the

³⁵ Paragraph (c), Article 6.32 of Act 57-2014.

³⁶ Paragraph (b), Article 6.32 of Act 57-2014.

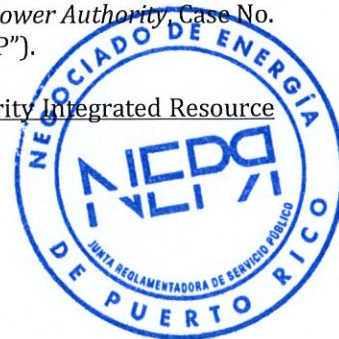
³⁷ Paragraph (d), Article 6.32 of Act 57-2014.

³⁸ See, Article 1.9 of Act 17-2019 and Article 6.23 of Act 57-2014.

³⁹ See, Final Resolution and Order on the First Integrated Resources Plan of the Puerto Rico Electric Power Authority, *In re: Integrated Resources Plan for the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, September 26, 2016.

⁴⁰ See, Resolution on the Verified Motion for Reconsideration of Puerto Rico Electric Power Authority, *In re: Integrated Resources Plan for the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, February 10, 2017; and Resolution, *In re: Integrated Resources Plan for the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2015-0002, February 10, 2017 (collectively referred to as the "Approved IRP").

⁴¹ See, Resolution and Order, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, March 14, 2018, p. 2.



Energy Bureau initiated Case No. CEPR-AP-2018-0001 in order to review PREPA's Approved IRP.⁴²

As part of the current IRP review process, on June 7, 2019, PREPA filed before the Energy Bureau the Proposed IRP.⁴³ The Proposed IRP Proceeding is in its final stages, therefore the Energy Bureau has not issued a final order or resolution regarding PREPA's Proposed IRP.

The terms of the Proposed Agreements were not part of the analysis of PREPA's Approved IRP. As such, the EcoEléctrica Facility was modeled under the terms of the Current Eco-PPOA. On the other hand, as part of PREPA's Proposed IRP, PREPA included potential revisions to capacity payments to EcoEléctrica as some scenario assumptions, but other portions of the specific terms of the Proposed Agreements were not included in the analysis of PREPA's Proposed IRP.⁴⁴

In its Petition, PREPA contends that the terms it has secured through the Proposed Agreements regarding the capacity payments and the fuel prices make the continued operation of the EcoEléctrica Facility and the Naturgy related LNG receiving terminal, a substantially more attractive option than the replacement Combined Cycle Unit project in the same general location, included in Scenario 4, Strategy 2 of PREPA's Proposed IRP.⁴⁵ In the November 27 Resolution and Order, the Energy Bureau determined that this assertion needed to be evaluated in the Proposed IRP Proceeding.⁴⁶

To that effect, on December 13, 2019, the Energy Bureau issued ROI #10 in the Proposed IRP Proceeding. As stated before, PREPA provided its answers to ROI #10 on January 22, 2020 and supplemental answers on January 29, 2020. At the February 14 Technical Conference, the Energy Bureau took administrative notice of PREPA's answers to ROI #10. Thus, such answers are part of the administrative record of the instant case.

Based on the results of modeling runs filed as a response to ROI #10, it can be established that the benefits of approving the Proposed Agreements are greater than the costs, when compared to not approving the Proposed Agreements. The core modeling results included as part of the Responses to ROI #10 show that the costs to consumers are

⁴² *Id.*, pp. 3 - 4.

⁴³ PREPA's Cover Filing for Accompanying Compliance IRP Filing Due June 7, 2019, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, June 7, 2019.

⁴⁴ See, for example, the Energy Bureau Request for Information #9 ("ROI #9") and PREPA's Responses to ROI #9 ("Responses to ROI #9") in the Proposed IRP Proceeding.

⁴⁵ Petition, pp. 3 and 17-18.

⁴⁶ November 27 Resolution and Order, p. 8.



higher without the Proposed Agreements in all cases, except for two (2) scenarios with no solar energy addition limitation.⁴⁷

For those two (2) cases in which the cost is lower without the Proposed Agreements, PREPA rationally explained the reasons why a “storage refined” post-processing analysis of the model results leads to the Proposed Agreements being lower cost to consumers than without the Proposed Agreements runs.⁴⁸ In those two cases, a more optimal balance of increased storage resources allows for lower solar photovoltaic curtailment and reduced use of fossil fueled generation, leading to overall lower costs relative to the case where the Proposed Agreements are not approved.⁴⁹

The “storage refined” post-processing analysis consists of increasing the amount of storage resources in order to reduce solar curtailment (*i.e.* the amount of energy produced by photovoltaic generation assets that cannot be injected into the transmission and distribution system, but must be purchased by PREPA).⁵⁰ This refinement is necessary due to some limitations of the Aurora Capacity Expansion Model.⁵¹ The result of the “storage refined” post-processing analysis was that, with the reduction of the curtailment costs, for all the scenarios, the benefits of approving the Proposed Agreements were greater than the costs, when compared to not approving the Proposed Agreements.⁵²

Therefore, the Energy Bureau **DETERMINES** that PREPA’s “storage refined” model run, is a reasonable post-processing exercise. Moreover, the Energy Bureau **ALSO DETERMINES** that all cases (across three different effective load levels) demonstrate a benefit to Puerto Rico’s ratepayers by approving the Proposed Agreements, rather than not approving those terms.

It is important to note that the IRP models exclude considerations related to certain “take or pay” provisions included in the Proposed Agreements. After analyzing such “take or pay” provisions, it was determined that the later years of the Proposed Agreements see a potential for negative “take or pay” effects that, in total, could reach on the order of a maximum of \$100 million (Net Present Value, “NPV”). The actual effect would depend on the overall success of energy efficiency and solar photovoltaic installation efforts.

⁴⁷ Responses to ROI #10, Table 2, p. 10, January 22, 2020. The two scenarios in which the costs to consumers are higher with the Proposed Agreements are: S4S2 low EE, and S4S2 no EE (using the scenario nomenclature defined in Case No. CEPR-AP-2018-0001).

⁴⁸ Testimony of Dr. Nelson Bacalao, Evidentiary Hearing of February 6, 2020, Case No. CEPR-AP-2018-0001.

⁴⁹ *Id.*

⁵⁰ Responses to ROI #10, p. 9, January 22, 2020.

⁵¹ *Id.*

⁵² Responses to ROI #10, Table 2 (Column #4, Eco PPOA with Storage Refined (Final)), p. 10, January 22, 2020.



This \$100 million exposure exists in scenarios where there is a greater deployment of solar photovoltaic assets and achieving higher levels of energy efficiency, such as seen with S3S2B, full EE. This is due to the fact that greater deployment of solar photovoltaic assets and achieving higher levels of energy efficiency would result in lower gas consumption at EcoEléctrica in the out years of the contracts, starting in 2026, but mostly in the years 2030 through 2032. However, even under this scenario, the benefits seen in the Responses to ROI #10 surpass this risk, as the lower overall NPV cost in almost every scenario associated with the Proposed Agreements exceeds \$100 million and thus mitigates against this exposure.⁵³

Now, as we stated on the November 27 Resolution and Order, the Proposed Agreements (and its terms) were not part of the Analysis of the Approved IRP.⁵⁴ 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 the EcoEléctrica contract in the Approved IRP.⁵⁵

However, the planning horizon for the Approved IRP was from 2015 to 2035.⁵⁶ The Action Plan contained the approved actions from 2015 until the end of FY-2021.⁵⁷ The Proposed Agreements' term is from 2019 to 2032. Therefore, such term lies within the planning horizon of the Approved IRP (*i.e.* 2015-2035).

As we stated in the November 27 Resolution and Order, in its Petition, PREPA presented only one case scenario to evaluate the Proposed Agreements.⁵⁸ This single analysis was not sufficient to establish that the Proposed Agreements were consistent with the IRP.⁵⁹

⁵³ See Responses to ROI #10, Table 2, p. 10, January 22, 2020. There are certain events that trigger a reduced "take or pay" obligation under the Proposed Agreements, including Costa Sur Units 5 and 6 being shut down due to events of *force majeure*. During the February 14 Technical Hearing, PREPA's representatives confirmed that the referenced provisions apply to the current Costa Sur situation. Therefore, there will be no "take or pay" obligations associated to the Costa Sur Facility due to the January 7, 2020 earthquake.

⁵⁴ November 27 Resolution and Order, p. 7.

⁵⁵ *Id.*

⁵⁶ See Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, In re: Integrated Resources Plan for the Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-0002, September 26, 2016.

⁵⁷ *Id.*

⁵⁸ November 27 Resolution and Order, p. 8, n. 20.

⁵⁹ *Id.*



On the other hand, PREPA provided the Responses to ROI #10 based on the Energy Bureau's requirement for it to conduct additional runs as part of the Proposed IRP Proceeding to verify whether or not the Proposed Agreements were economical over the scenarios contained in the Proposed IRP. PREPA's Responses to ROI #10 represent a robust and rigorous analysis that considers the Proposed Agreements over a wide variety of scenarios, **using the most updated information and an IRP-type analysis.**⁶⁰

As we stated before, the benefits of approving the Proposed Agreements are greater than the costs, when compared to not approving the Proposed Agreements. Therefore, the benefits of the Proposed Agreements were demonstrated for a term that lies within the planning horizon of the Approved IRP, **using the most updated information while analyzing a wide variety of scenarios in an IRP-like setting.** Under these special circumstances, the Energy Bureau **DETERMINES** that the Proposed Agreements should be approved as they could be considered consistent with the Approved IRP.⁶¹

B. Evaluation of the Petition within the time frame established in Act 17-2019; Final Determination

In its Request for Reconsideration, PREPA argues that the Energy Bureau has a ministerial duty to evaluate and approve the Proposed Agreements *in the merits* within the thirty-day period established in paragraph (e) of Section 6.32 of Act 57-2014 and that given Energy Bureau's failure to do so, the Proposed Agreements shall be considered as approved.⁶² PREPA also argues that nothing in Section 6.32 of Act 57-2014 limits the Energy Bureau's duty to evaluate the Proposed Agreements before final approval of the Proposed IRP.⁶³

Nothing in Article 6.32 of Act-57-2014 expressly calls for the evaluation of a proposed agreement *in the merits* within a thirty (30) days period, as PREPA contends. Within such timeframe, the Energy Bureau must issue one of the following three (3) determinations with regards to a proposed agreement: (a) approve it, (b) declare it contrary to the public interest, or (c) request more information to evaluate it in depth. In the instant case, the Energy Bureau determined that the Proposed Agreements were **contrary to the public interest**, within the prescribed thirty-day period. As such, the Energy Bureau took one of the actions

⁶⁰ As a matter of fact, the analysis performed in relation to the Responses to ROI #10 was done as part of the Proposed IRP Proceeding.

⁶¹ Given the timing of the request for approval of the Proposed Agreements, which coincided with the period for reviewing the Proposed IRP, the Energy Bureau deemed it prudent to review them through the IRP process as a due-diligence verification on whether they were in the best interests of the public. As discussed above, having taken advantage of that process, the Energy Bureau was able to determine they were lower cost than other alternatives.

⁶² Request for Reconsideration, p. 3, p. 7.

⁶³ *Id.*, pp. 2-3, p. 7.



prescribed by the referenced Section 6.32. Therefore, the Energy Bureau fulfilled its duty pursuant to Section 6.32 of Act 57-2014. Consequently, the Proposed Agreements cannot be considered as approved, as PREPA argues.

One of the main reasons to declare the Proposed Agreements contrary to the public interest was that PREPA had not conducted a thorough analysis of their terms, which in turn prevented the Energy Bureau to determine whether the Proposed Agreements are economic or consistent with the public policy regarding long-term planning.⁶⁴ As stated before, the Responses to ROI #10 represent a robust analysis of the Proposed Agreements' terms across different scenarios, as such scenarios are described in the Proposed IRP Proceeding. Thus, with the benefit of such evaluation and analysis process, the Energy Bureau is in a position to reconsider its initial determination. After evaluating the Petition in light of all the documents now in the administrative record, including PREPA's Responses to ROI #10, the Energy Bureau **APPROVES** the Proposed Agreements.⁶⁵

C. Confidentiality of the Summary of Provisions

As stated before, PREPA requested the Energy Bureau to grant confidential treatment to the Summary of Provisions. PREPA argued that such documents contain information that qualifies as proprietary information and as trade secrets.⁶⁶ In addition, PREPA argues that it is information related to an ongoing negotiation that is still pending approval.⁶⁷ According

⁶⁴ November 27 Resolution and Order, p. 8.

⁶⁵ Our determination in this case should not be construed as establishing the requirement of a comprehensive analysis of the type performed in an IRP proceeding for the evaluation of a proposed agreement under Article 6.32 of Act 57-2014. Under normal circumstances, the analysis of a proposed action would be performed against the IRP that is place at the time of the petition and the remaining requirements of Section 6.32. However, in the instant case, the Petition was presented when the Proposed IRP Proceeding was in a very advanced stage. Such proceeding was initiated based on the effects Hurricanes Irma and María had on the assumptions used in the analysis of the Approved IRP. Moreover, the fact that, at the time the Energy Bureau issued the November 27 Resolution and Order, the Proposed Agreements terms were not analyzed in the evaluation process of the Approved IRP or as part of the evaluation process of the Proposed IRP, made it impossible to determine if the Proposed Agreements were economical or in the best public interest. These special circumstances made it necessary for the Energy Bureau to order additional model runs and analysis in the Proposed IRP Proceeding. The purpose of ordering the analysis in the Proposed IRP Proceeding, instead through the instant case, was to avoid a parallel process that may represent duplicate investment of resources and efforts, and that could yield inconsistent results. On the other hand, given today's determination the Energy Bureau need not to address other issues included in the Request for Reconsideration, such as EcoEléctrica's Qualifying Facility status.

⁶⁶ *Request for Confidential Designation of Document Summarizing Contents of Draft Agreement*, p. 1, February 17, 2020. Therein PREPA stated that it "... incorporates and restates the arguments made as part of the December 19 Motion in which PREPA moved the Energy Bureau to grant confidential designation to documents that are similar to the Summary and also, requests the Energy Bureau to grant confidential designation to the Summary."

⁶⁷ *Id.*



to PREPA, and as part of the restated arguments from the Supplement to the Reconsideration,⁶⁸ the referenced information is protected under Puerto Rico law, specifically Act 80-2011⁶⁹ and Section 6.15 of Act 57-2014.

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 privileged or confidential treatment for any information that the submitting party understands deserves such protection.⁷⁰

Upon reviewing PREPA's arguments, the Energy Bureau **DETERMINES** that the information included in the Summary of Provisions, is proprietary, commercially sensitive and unavailable thorough 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. However, PREPA must submit redacted versions of the Summary of Provisions that is consistent with this determination. Such redacted versions will be part of the public docket of the instant case.

IV. Conclusion

For all of the above, the Energy Bureau **RECONSIDERS** the November 27 Resolution and Order. As such, the Energy Bureau **APPROVES** the Proposed Agreements. The Energy Bureau **GRANTS** PREPA's request for confidential designation and treatment of the Summary of Provisions, and **ORDERS** PREPA to, within ten (10) days of the notification date of this Resolution and Order, submit redacted versions of the Summary of Provisions. Such redacted versions will be part of the public docket of the instant case.

Any party adversely affected by this Resolution and Order may file a petition for review before the Court of Appeals within a term of thirty (30) days from the date a copy of the notice of this Resolution and Order was notified and copy of such notice was filed by the Energy Bureau's Clerk. Filing and notice of a petition for review before the Court of Appeals shall be made pursuant to the applicable provisions of Regulation 8543, Act 38-2017 and the Rules of the Puerto Rico Court of Appeals

Be it notified and published.

⁶⁸ Supplement to the Reconsideration, pp. 2-4.

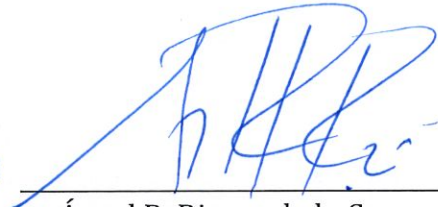
⁶⁹ Act 80-2011, as amended, known as *Industrial and Trade Secret Protection Act of Puerto Rico*.

⁷⁰ Act 57-2014, Article 6.15.

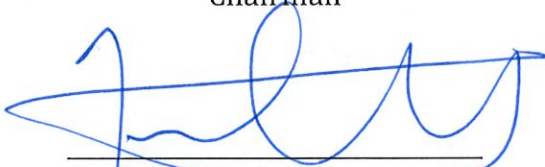


SEE PARTIAL concurring opinion

Edison Avilés Deliz
Chairman



Ángel R. Rivera de la Cruz
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on March 11, 2020. The Chairman Edison Avilés Deliz partially concurs with a separate written opinion. I also certify that on March 11, 2020 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, c-aquino@prepa.com, adiaz@diazvaz.law, mvazquez@diazvaz.law and kbolanos@diazvaz.law. I also certify that today, March 11, 2020, 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:

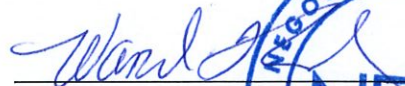
Puerto Rico Electric Power Authority

Nitza D. Vázquez Rodríguez
Astrid I. Rodríguez Cruz
Jorge R. Ruíz Pabón
Carlos M. Aquino Ramos
PO Box 363928
San Juan, PR 00936-3928

Díaz & Vázquez Law Firm, PSC

Lcda. Katuska Bolaños Lugo
Lcda. Maraliz Vázquez Marrero
Lcdo. Arturo Díaz Angueira
PO Box 11689
San Juan, PR 00922-1189

For the record, I sign this in San Juan, Puerto Rico, today March 11, 2020.



Wanda I. Cordero Morales
Clerk



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.

CHAIR EDISON AVILÉS DELIZ,
Partially Concur

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 this case in which it resolved, that the Agreements are contrary to the public interest ("November 27 Resolution and Order"), consequently it denied the Petition. I dissented from such determination.²

PREPA asked the Energy Bureau for the reconsideration of the November 27 Resolution and Order. Thereafter, PREPA supplemented the Request for Reconsideration by submitting the following documents: (a) *Gas Price*, (b) *Projected Savings Per Year*, (c)

¹ PREPA attached to the Petition the following documents: (a) *Capacity Payment Liability Risk*, (b) *Natural Gas Supply Interruption Risk*, (c) *Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and the Puerto Rico Electric Power Authority* ("Proposed PPOA"), (d) *Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos S.A. and the Puerto Rico Electric Power Authority* ("Proposed GSPA"), (e) *PREPA Board Resolution* dated October 21, 2019 ("Board Resolution"), and (f) *Memo to PREPA CEO and IRP Team from Siemens PTI/AB* dated October 2, 2019 ("Siemens' Memorandum"). The Proposed PPOA and the Proposed GSPA are collectively referred to as the "Agreements".

² I agree with the procedural background included in the Energy Bureau's majority opinion; thus, I will refer to the same using the same designations therein included, as it may be necessary.

Projected Savings Presentation, (d) EcoEléctrica and Naturgy Contract Renegotiations Report, prepared on behalf of PREPA by Sargent and Lundy, dated November 19, 2019 ("S&L Report"); (e) letter from the Fiscal Oversight and Management Board ("FOMB") dated December 26, 2019, Re: EcoEléctrica and Gas Natural Aprovevisionamientos Contracts Amendments ("FOMB Agreements' Approval"), (f) Summary of the Scheduling, Take-Or-Pay and Make-Up Provisions Under the Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos S.A. and the Puerto Rico Electric Power Authority ('Amended-GSPA') ("Summary of Pertinent Clauses").

In addition, a technical conference was held before the Energy Bureau in which PREPA and EcoEléctrica's representatives provided detailed explanations of the scope of the Agreements as well as the structure of the proposed transaction. During the Technical Conference the Energy Bureau took official knowledge of: (a) the Energy Bureau's Requirement of Information #10 ("ROI-10") in Case No. CEPR-AP-2018-0001 and (b) the Puerto Rico Electric Power Authority's Responses to the Puerto Rico Energy Bureau's Tenth Requirement of Information ("Response to ROI-10").

Today, after evaluating in detail the Petition and its attachments as well as all the additional information provided by PREPA in support to the Petition, the Energy Bureau reconsidered its initial determination and approved the Agreements. I concur with the determination of the majority approving the Agreements. However, I reiterate the position expressed in my prior dissents in this case, as summarized below.

Article Section 6.32 of Act 57-2014³, as amended by Act 17-2019⁴, requires the Energy Bureau to evaluate a proposed power purchase agreement and decide on it as a standalone process taking into consideration the approved integrated resource plan at the moment the petition is made. The Energy Bureau must compare the terms of the proposed agreements with the ones considered in an approved IRP. If the proposed agreement terms are better than the ones considered in an approved IRP, the Energy Bureau can conclude that they are consistent with the approved IRP and must therefore approve the agreement. Otherwise, the petition for approval must be declared against the public interest.

Moreover, I reiterate that all the information necessary for the Energy Bureau's evaluation of a proposed agreement must be require in such case itself and no other. Otherwise, the Energy Bureau may be involved in an IRP-type comprehensive analysis for the evaluation of each proposed power purchase agreement.⁵ That, in my opinion, is

³ Act 57 of May 27, 2014, known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

⁴ Act 17 of April 11, 2019, known as *The Puerto Rico Energy Public Policy Act* ("Act-17-2019").

⁵ This case should have come to an end a long time ago, if we had required all the necessary information to PREPA immediately after the filing of the Petition.



not the intent of Article 6.32 of Act 57-2014.

As discussed in detail in the majority opinion, the overwhelming evidence in this case demonstrates that the Agreements not only are consistent with PREPA's Approved IRP but also with PREPA's Proposed IRP. In addition, implicit in the majority opinion and, as it is clear from the administrative record in this case, the Agreements are consistent with the Puerto Rico Energy Public Policy and aligned with the public interest. Compliance with the Puerto Rico Energy Public Policy is achieved, among others, by ensuring the provision of electric service with more just and reasonable rates for the customers. In this case in the short and the long-term, customers will benefit from the approval of the Agreements.

First, the evaluation and analysis of the Response to ROI-#10 clearly demonstrate that the economic benefits of approving the Agreements are greater than the costs if the Agreements are not approved. Second, the S&L Report also confirms immediate savings in the range of \$81 million per year.

Under the Existing EcoEléctrica-PPOA⁶, EcoEléctrica provides to PREPA dependable capacity and electric energy services. PREPA proposes the extension of the Existing EcoEléctrica-PPOA for ten (10) additional years for EcoEléctrica to supply (i) energy, (ii) capacity, and (iii) ancillary services.⁷ On the other hand, under the Existing Naturgy-GSPA⁸, Naturgy provides to PREPA natural gas for Units 5 and 6 of the Costa Sur Facility. Under the Proposed Naturgy-GSPA, the existing contract shall be extended for ten (10) additional years and Naturgy will supply natural gas to the EcoEléctrica Facility as well as to Units 5 and 6 of the Costa Sur Facility⁹

PREPA argued in the Petition that the Agreements would secure the following benefits:

1. immediate savings for Puerto Rico electric ratepayers of \$122.4 million per year¹⁰;
2. a relative reduction in capacity payment of \$108 million annually¹¹;

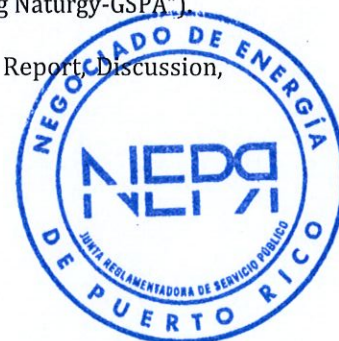
⁶ Power Purchase Agreement between EcoEléctrica, LP and PREPA, dated March 10, 1995, as amended ("Existing EcoEléctrica-PPOA").

⁷ A comparison of the existing and proposed PPOAs is included in the S&L Report, Discussion, Table 2-2 (*Comparison of Existing and Proposed PPOA Terms*), p. 2-3.

⁸ *Natural Gas Sale and Purchase Agreement* executed in March 28, 2012, as amended ("Existing Naturgy-GSPA").

⁹ A comparison of existing and proposed GSPAs terms is included, as follows *See*, S&L Report Discussion, Table 2-3 (*Comparison of Existing and Proposed GSA Terms*), p. 2-5.

¹⁰ Petition, p. 4.



3. a net PPOA price reduction of \$56.3 million annually¹²;
4. a \$66.1 million annual "spot price" avoidance savings by dispatching EcoEléctrica (to its maximum amounts) while reducing dispatch of more expensive facilities¹³;
5. a lowering of the cost of power from EcoEléctrica of approximately 1.5 cents/kWh¹⁴;
6. an update to the structure of the GSPA to allow "significantly increased flexibility to PREPA in take-or-pay obligations"¹⁵.

The Petition does not describe in detail how some of these elements are related to each other. However, once PREPA supplement the Petition, particularly by submitting the S&L Report, a more thorough narrative and specific sources of savings from the Agreements were identified.

The S&L Report shows a detailed rationale for the following savings:

1. net savings of \$35 million per year from a combination of the capacity payment reduction (\$76.9 million) and the increase in fuel cost (\$41.9 million);¹⁶
2. net savings of \$36 million from a combination of the EcoEléctrica dispatch savings at high capacity factor (the Proposed PPOA allows for lower-priced gas at high dispatch levels, relative to the price at those levels under the Existing EcoEléctrica-PPOA), and a reduction in the need for oil-fired energy at an alternative generator (potentially the Aguirre Steam Unit)¹⁷;

¹¹ *Id.*, p. 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S&L Report, Discussion at p. 3-9, repeated at p. III of the Executive Summary.

¹⁷ S&L Report, Discussion at p. 3-10, repeated at p. III of the Executive Summary.



3. a reduction in costs associated with reduced pricing for gas delivered to Costa Sur (under the Existing Naturgy-GSPA, applicable gas prices include an index to oil prices, causing the net effect to be higher gas prices for the Costa Sur's Units 5 and 6), leading to early-year (first 5-years) savings of \$10 million per year, but average savings over the longer term of \$29 million per year.¹⁸

In sum, these three (3) components lead to an estimated early-years' annual savings of roughly \$81 million per year, which could be higher under certain circumstances. The S&L Report indicates that those amounts are roughly in line with the Fiscal Plan target savings of \$80 million per year from renegotiation of existing fuel based PPOAs.¹⁹

While the claimed savings in the Petition do not directly reconcile with values reported in the S&L Report, the overall effect is similar. Note that the immediate savings of \$122.4 million per year included in the Petition are roughly tied to the results of the Siemens' Memorandum, which shows year 2021 savings of \$122 million for the "discounted capacity payment".²⁰ The total sum \$81 million per year in the S&L Report is more than the \$56.3 million net PPOA price reduction included in the Petition, but it factors in the portions of the "spot price avoidance" savings seen in the Petition.

Overall, the S&L Report clearly demonstrates net savings from the Proposed Agreements relative to the existing contracts, which should deliver meaningful savings to PREPA's ratepayers. Therefore, the approval of the Agreements is warranted, as they secure the battered PREPA's customer an immediate reduction in its electric bill, a reduction badly needed, and which does not depend on access to, public, private nor federal funds.

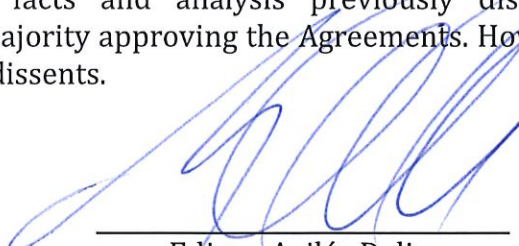
¹⁸ S&L Report, Discussion at p. 3-11, repeated at p. III of the Executive Summary.

¹⁹ S&L Report, at p. III of the Executive Summary. On June 2019 the FOMB certified PREPA's Fiscal Plan, in accordance with Title III of PROMESA ("PREPA's Fiscal Plan"). PREPA's Fiscal Plan provides for the renegotiation of existing conventional fuel power purchase agreements (Existing EcoEléctrica-PPOA and AES-PPOA) with the objective of achieving a run rate saving of \$80M in Fiscal Year 2020 ("FY20"). The \$80M savings target is a joint target for both contract renegotiations. Although the FOMB expressed concerns with the estimates of savings claimed by PREPA a consequence of the renegotiation of the contracts, it recognized that there were significant savings and that Agreements will add value to PREPA's customers by reducing PREPA's cost of fuel and purchased power which, when combined with the implementation of other initiatives, should deliver meaningful results to PREPA's ratepayers. See attachment to FOMB's Approval Letter at pp. 2-3.

²⁰ See Siemens' Memorandum, p. 1.



Based on the facts and analysis previously discussed, I concur with the determination of the majority approving the Agreements. However, I reiterate the position expressed in my prior dissents.



Edison Avilés Deliz
Chair

In San Juan, Puerto Rico, March 11, 2020.

