

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

NEPR

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**IN RE: REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY
INTEGRATED RESEOURCE PLAN**

CASE NUM.: CEPR-AP-2018-0001

**SUBJECT: ARCTAS CAPITAL GROUP, LP REPLY
TO FINAL SUBSTANTIVE AND LEGAL BRIEFS**

ARCTAS REPLY TO LEGAL BRIEFS

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

NOW COMES Arctas Capital Group, LP (“Arctas”), through its legal representative and authorized officer, and respectfully files with the Puerto Rico Energy Bureau (“Energy Bureau”), Arctas Reply to Final Substantive and Legal Briefs submitted to the Energy Bureau in accordance with the July 3, 2019 Resolution and Order regarding Completeness Determination and PREPA’s IRP Filing and Procedural Calendar.

To the extent any generation or LNG/natural gas infrastructure resources projects included in the Preferred Resource Plan that is approved by the Energy Bureau in this IRP proceeding, the Energy Bureau should timely exercise its power to ensure a competitive public procurement process which fully complies with all applicable laws and regulations related to the procurement processes. This reply addresses matters included in the PREPA Final Brief in Support of the Proposed Integrated Resource Plan (“the PREPA Brief”) that affect how PREPA may conduct the procurement process any generation or LNG/natural gas

infrastructure resources projects included in the Preferred Resource Plan. The terms “Action Plan,” “Preferred Resource Plan,” and ESM Plan herein have the same meaning as in the PREPA Brief.¹ Accordingly, Arctas respectfully STATES and PRAYS:

I. Existing IRP

On September 26, 2016, the Energy Bureau approved PREPA’s existing operative Integrated Resource Plan (“PREPA’s Operative IRP”).² PREPA’s Operative IRP, VII. Approval of Modified IRP, B. The Modified IRP, 1. Modified IRP segment 1: Action, 288. states:

“For many of the directives listed below, PREPA must submit to the Commission detailed information, such as progress reports, and, when required, draft RFPs, pursuant to Section 6B(a)(iii) of Act 83 and the Joint Regulation approved by the Commission and PREPA to that effect. PREPA must comply with the terms and conditions of such Joint Regulation when conducting any public procurement processes performed to comply with the dispositions of this Final Resolution and Order. The Commission will exercise its power to review and guarantee that PREPA undertakes a public procurement process which fully complies with the goals and objectives of the Modified IRP, this Final Resolution and Order and all applicable laws and regulations related to the procurement processes. The Commission will

¹ PREPA Brief, III Applicable Laws, Rules and Regulations states “The Action Plan is a “*plan that identifies the specific actions that PREPA will perform during the first five (5) years of the Planning Period in order to implement the Preferred Resource Plan.*” The Preferred Resource Plan is the “*portfolio of resource additions selected by PREPA from amongst those evaluated in the IRP representing the best performing resource mix to be implemented in the Action Plan.*”

PREPA Brief, 2. The Action Plan and Its Relationship with the ESM Plan, p. 29 states “The ESM Plan is based on the S4S2 LTCE plan [Scenario 4, Strategy 2 Long Term Capacity Expansion plan] with some modifications, referred to as “*fixed decisions*”, designed to mitigate execution risk.

² See September 26, 2016 Energy Commission Final Resolution and Order on the First Integrated Resource Plan of the Puerto Rico Electric Power Authority, Case No.: CEPR-AP-2015-0002

not approve any competitive bidding process that do not conform to the objectives and directives set forth herein.”

The above referenced Joint Regulation is the Regulation 8815 Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet, approved by the Energy Commission on September 1, 2016. The Joint Regulation requires PREPA to notify and submit to the Energy Bureau certain information regarding the procurement process for the Energy Bureau to approve, reject, or propose modifications – prior to PREPA taking certain actions.

II. PREPA Proposed IRP

The PREPA Brief states in 2. The Action Plan and Its Relationship with the ESM Plan:

*“The ESM Plan is based on the S4S2 LTCE plan with some modifications, referred to as “fixed decisions”, designed to mitigate execution risk. That is, the ESM Plan is a derivative of Scenario 4, Strategy 2 that incorporates feedback from stakeholders, **utilizes potential procurement options provided by the Public Private Partnership Act**, and preserves optionality - the “hedges” discussed above and described below – through the assumption that specified generation development and permitting efforts would be commenced early and pursued to completion if demand, the pace of renewable resource additions or other circumstances warrant.”*

Any generation or LNG/natural gas infrastructure resources projects included in an Action Plan approved by the Energy Bureau in this IRP proceeding, which are subsequently developed under procurement options provided by the Public Private Partnership Act,

which are a PREPA Transaction³, will ultimately require the Energy Bureau issue an Energy Compliance Certificate⁴ (“Certificate”) in accordance with Act 120-2018⁵.

To the extent any generation or LNG/natural gas infrastructure resources projects are developed as a PREPA Transaction, and a Preliminary Contract is presented to Energy Bureau, the Energy Bureau will have to determine whether the Preliminary Contract complies with the regulatory framework, the energy public policy, and the code of law in effect in order to issue the Certificate. However, the Energy Bureau decision whether to issue the Certificate is only made after the Energy Bureau receives a report and a preliminary contract for the proposed PREPA Transaction. This is the opposite of how resource projects were required to be developed in the PREPA’s Operative IRP, under the Joint Regulation, whereby PREPA must first obtain Energy Bureau approval to pursue an RFP, conduct the RFP in accordance to the conditions stipulated by the Energy Bureau, and then obtain Energy Bureau approval of the proposed contract.⁶ The RFP approach under the Joint Regulation allows the Energy Bureau to modify the PREPA proposed procurement process, if necessary, before it is started so as to help ensure that the end result is a

³ Act 120-2018 defines a PREPA Transaction as “Any and all transactions carried out in accordance with the provisions of Act No. 29-2009 and this Act, whereby PREPA or the Government of Puerto Rico establishes one or more Partnerships in connection with any of PREPA’s functions, services, or facilities, or executes a Sales Contract for PREPA Assets related to electric power generation.”

⁴ Act 120-2018 defines Energy Compliance Certificate as “The Certificate issued by the Commission in any PREPA Transaction certifying that the Preliminary Contract complies with the regulatory framework, the energy public policy, and the code of law in effect.”

⁵ Act 120-2018 Section 5 (g) states “Any contract related to a PREPA Transaction shall require an Energy Compliance Certificate, as defined in the Act.”

⁶ The Energy Bureau explains the legal basis and approval requirements in a NEPR-AP-2020-001, Request for Approval of Request for Proposals for Temporary Emergency Generation, March 3, 2019 Resolution and Order, II Discussion and Analysis, B. Legal Framework Applicable to the Evaluation of the Proposed RFP

procurement contract that is approved by the Energy Bureau – before spending resources and time on a procurement that may ultimately have to be materially redone or perhaps not approved at all.

As noted in the PREPA Brief, it takes time to development projects; a significant amount of time and resources will be spent to receive proposals, select a contractor, and negotiate a Preliminary Contract that is then submitted to the Energy Bureau. Since PREPA plans to use procurement options provided by the Public Private Partnership Act, the results of which will only be submitted to the Energy Bureau at the end of the procurement process after the Preliminary Contract is negotiated, the Energy Bureau should provide as much guidance as possible to PREPA (for projects included in an Energy Bureau approved Action Plan, including projects in the ESM Plan) regarding what is required for any particular project to comply with the regulatory framework, the energy public policy, and the code of law in effect – as required for the Energy Bureau to issue the Certificate. To not provide such guidance in an Energy Bureau approved Action Plan could result in a significant amount of time and resources spent developing a project that may ultimately not receive a Certificate, which could lead to project delays or lost opportunities to reduce PREPA's costs.

For example, Energy Bureau guidance could be provided, i) regarding conditions that would result in a competitive RFP structure, ii) access and/or use of PREPA or governmental entity assets, and iii) acceptable Preliminary Contract terms and conditions – all of which if implemented would help result in an Energy Bureau determination that a

particular Preliminary Contract does in fact comply with the regulatory framework, the energy public policy, and the code of law. We request the Energy Bureau consider the recommendations included in the Arctas Brief, as it relates to any of the aforementioned aspects i)-iii) in the preceding sentence, in addition to any particular project procurement and RFP process guidance the Energy Bureau determines is appropriate to include in an approved Action Plan.

III. Budget to develop proposed projects

The PREPA Brief notes that developing new generation resources takes time – on the order of several years – and that project development activities are necessary. The PREPA Brief states *“By proceeding in this way with preliminary permitting and planning activities for new generation options, the Action Plan preserves for PREPA the ability to react in time to accommodate changes in load and available resources relative to forecasts.”* Undoubtedly, a fair amount of development work and expense for proposed projects will be borne by the selected winner of each project. However, a certain amount of project development work will have to be completed in advance of selecting a winner for each project. Such work is best completed by PREPA or contractors to PREPA and could include the following for example:

- Identifying PREPA or other governmental entity assets to be made available to the bidders such as use of land, port facilities and areas, and rights of ways

- Preliminary engineering and studies necessary to define the project scope in areas such as grid interconnection, access to and integration with existing PREPA infrastructure, and initiating permitting early in the RFP process
- Negotiating project agreements in which PREPA is a counterparty, which may include PPOAs, use agreements for PREPA assets, fuel delivery and supply agreements

PREPA should be authorized to incur appropriate costs as necessary to execute a robust procurement process, with established amounts, guidelines, and other requirements as PREPA and the Energy Bureau determine are proper. Such authorization will provide a clear signal to potential bidders of the PREPA and the Energy Bureau commitment to projects that the Energy Bureau authorizes PREPA to pursue, enhancing interest the projects which ultimately will lead to a robust competitive process.

IV. Arctas restates its previous motions

Arctas reiterates issues and concerns raised, and recommendations made, in its Informative Motion Presenting Recommendations for the Proposed Approval of the EcoElectrica Agreements filed February 13, 2020 and the Arctas Final Substantive and Legal Brief filed March 6, 2020 in the instant proceeding.

V. Conclusion

WHEREFORE, Arctas requests the Energy Bureau consider and adopt in its decision the recommendations herein.

WE CERTIFY that this day we have sent this Reply to Final and Substantive Legal Briefs, regarding Case No. CEPR-AP-2018-0001 using the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov>.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico, this April 20, 2020.

s/ Antonio Torres-Miranda

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CERTIFICATE OF SERVICE

I hereby certify that; a copy of the filing was sent via e-mail to:

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